

1 (2) The Governor shall appoint seven (7) members to serve on the board with the  
2 following representation:

3 (a) Five (5) members who are massage therapists licensed under KRS 309.350 to  
4 309.364, who have been in the practice of massage therapy for at least five (5)  
5 of the last seven (7) years prior to June 24, 2003, and who are residents of  
6 Kentucky;

7 (b) Of these five (5), at least one (1) but no more than two (2) shall own or direct  
8 a board-approved massage therapy training program; and

9 (c) Two (2) members shall be appointed by the Governor and shall serve as  
10 members at large who are neither licensed massage therapists nor spouses of  
11 persons who are licensed, or have a direct or indirect interest in the profession  
12 regulated under KRS 309.350 to 309.364. One (1) of the two (2) may hold a  
13 license in another health care profession.

14 (3) Appointments shall be for three (3) years with initial appointments as follows: three  
15 (3) appointees shall serve three (3) year terms; two (2) shall serve two (2) year  
16 terms; and two (2) shall serve one (1) year terms. The Governor shall assign terms  
17 to initial members at his or her discretion.

18 (4) The board shall elect initially, and annually thereafter, a chair, vice chair, and  
19 secretary from its membership and shall meet at least once per year, and more often  
20 as deemed necessary, at a time and at a place in Kentucky for the board to fulfill its  
21 duties.

22 (5) Each member of the board shall receive a per diem not to exceed one hundred  
23 dollars (\$100) and other actual and necessary expenses for each day he or she is  
24 actually engaged in the discharge of the board's official duties.

25 (6) Upon recommendation of the board, the Governor may remove any member of the  
26 board for a poor attendance record, neglect of duty, or malfeasance in office.

27 ➔Section 1668. KRS 310.040 is amended to read as follows:

1 (1) The Kentucky Board of Licensure and Certification for Dietitians and Nutritionists  
 2 is hereby created to be comprised of seven (7) members appointed by the Governor.  
 3 Three (3) members shall be licensed dietitians, three (3) members shall be certified  
 4 nutritionists and one (1) member shall be a public member who shall have no  
 5 pecuniary interest in the nutrition field. Of the members from the nutrition field, one  
 6 (1) shall represent hospitals, one (1) shall represent health care facilities other than  
 7 hospitals, one (1) shall represent state or local nutritional programs or shall be in  
 8 private practice and one (1) shall be a dietetic educator. Appointments may be made  
 9 from a list of nominees submitted to the Governor by the Kentucky Dietetic  
 10 Association, the Kentucky Hospital Association, the Kentucky Association of  
 11 Health Care Facilities, and the Kentucky Medical Association;

12 ~~(2)[ The board shall be placed for administrative purposes under the Division of~~  
 13 ~~Occupations and Professions of the Environmental and Public Protection Cabinet.~~

14 ~~(3)}~~ Each member of the board shall serve for a term of four (4) years, except that for  
 15 initial appointments, one (1) shall be for four (4) years, two (2) shall be for three (3)  
 16 years, and two (2) shall be for two (2) years and one (1) shall be for one (1) year. No  
 17 member shall serve more than two (2) consecutive terms and each member on July  
 18 15, 1994, shall serve on the board until his successor is appointed. Vacancies shall  
 19 be filled by appointment of the Governor for the unexpired term.

20 ~~(3)~~~~(4)}~~ The board shall organize annually and elect one (1) of its members as  
 21 chairman and one (1) of its members as secretary. A quorum of the board shall  
 22 consist of four (4) members. The board shall meet at least quarterly and upon the  
 23 call of the chairman, or at the request of two (2) or more members to the secretary  
 24 of the board.

25 ~~(4)~~~~(5)}~~ Each member of the board shall receive compensation for services in an  
 26 amount determined by the department, not to exceed one hundred dollars (\$100)  
 27 dollars per meeting. The members shall be reimbursed for all travel expenses for

1 attending the meetings of the board. The compensation of members and employees  
 2 of the board shall be paid from the revolving fund established in KRS 310.041(7).

3 ➔Section 1669. KRS 317A.110 is amended to read as follows:

4 (1) The principal office of the board created by this chapter shall be located in such  
 5 place as will enable the board to have access to records and technical assistance of  
 6 the Office~~Division~~ of Occupations and Professions;

7 (2) The Office~~Division~~ of Occupations and Professions shall give cooperation and  
 8 technical advice and assistance to the board created by this chapter.

9 ➔Section 1670. KRS 318.010 is amended to read as follows:

10 As used in this chapter, unless the context requires otherwise:

11 (1) "Department~~Office~~" means Department~~Office~~ of Housing, Buildings and  
 12 Construction;

13 (2) "Journeyman plumber" means a person who engages or offers to engage, either as  
 14 an occupation or otherwise, in the construction, installation, alteration,  
 15 maintenance, repair, remodeling or removal, and replacement of plumbing under the  
 16 supervision, direction, and responsibility of a master plumber;

17 (3) "Master plumber" means a person who assumes responsible charge, supervision, or  
 18 direction of journeyman plumbers, plumbers' apprentices, and other persons in the  
 19 construction, installation, or alteration of plumbing or who engages in, offers to  
 20 engage in, or advertises or otherwise represents that he is permitted or qualified to  
 21 engage in the design, planning, superintending, contracting for, or responsible  
 22 charge of plumbing;

23 (4) "Plumbing" means the art of installing in buildings the pipes for distributing the  
 24 water supply, the fixtures for using water and drainage pipes for removing waste  
 25 water and sewage, together with fittings, appurtenances, and appliances of various  
 26 kinds, all within or adjacent to the building. It shall not include the installation of  
 27 on-site sewage disposal systems, except for the piping, fixtures, or other

- 1 appurtenances needed within the building. It shall include:
- 2 (a) The water service pipe which forms the connection between the property line  
3 and the building, other than piping serving firefighting equipment;
- 4 (b) Private water supply systems;
- 5 (c) House sewers which convey the waste water and sewage from the building to  
6 the property line or other points of disposal, but not including sewers located  
7 between manholes and sewers extending five (5) feet from a main or manhole  
8 on private property;
- 9 (d) Storm sewers and rain water piping located within a building to a point two  
10 (2) feet outside of the building; and
- 11 (e) Medical gas piping;
- 12 (5) "Public building" means any building intended for public use or built with public  
13 funds and includes but is not limited to the following: schools, industrial  
14 establishments, housing projects, restaurants, food-handling establishments, private  
15 clubs, theaters including drive-ins, trailer coach parks, camping areas, hospitals,  
16 nursing homes, hotels, motels, tourist courts, rooming houses, boarding houses, and  
17 other establishments furnishing public sleeping accommodations;
- 18 (6) "Maintenance man" means a person employed to maintain and keep plumbing in  
19 good repair;
- 20 (7) "Apprentice" means a person in the process of learning the plumbing trade who  
21 assists and is under the personal supervision of a licensed master or licensed  
22 journeyman plumber;
- 23 (8) "Farmstead" means a farm dwelling together with other farm buildings and  
24 structures incident to the operation and maintenance of the farm situated on ten (10)  
25 acres or more of land which is located outside the corporate limits of a municipality;
- 26 (9) "Person" means any individual, public or private corporation, political subdivision,  
27 government agency, municipality, copartnership, association, firm, trust, estate, or



1 other entity whatsoever;

2 (10) "Commissioner~~[Executive director]~~" means the commissioner~~[executive director]~~  
3 of the Department~~[Office]~~ of Housing, Buildings and Construction; and

4 (11) "Code" means the Kentucky State Plumbing Code.

5 ➔Section 1671. KRS 318.015 is amended to read as follows:

6 (1) This chapter applies and shall be in full force and effect in all counties of the  
7 Commonwealth.

8 (2) The state plumbing code promulgated by the department~~[office]~~ under the  
9 provisions of this chapter applies and shall be in full force and effect for all public  
10 buildings regardless of location in the Commonwealth.

11 (3) This chapter shall not apply to farmsteads.

12 ➔Section 1672. KRS 318.030 is amended to read as follows:

13 (1) No person shall engage in plumbing or engage in or work at the trade of plumbing:

14 (a) Unless he or she is the holder of a valid and effective active master plumber's  
15 license duly issued by the department~~[office]~~ in accordance with the  
16 provisions of this chapter; or

17 (b) Unless he or she is the holder of a valid and effective journeyman plumber's  
18 license duly issued by the department~~[office]~~ in accordance with the  
19 provisions of this chapter.

20 (2) (a) No person, firm, or corporation shall engage in plumbing or engage in or work  
21 at the trade of plumbing unless the person, firm, or corporation maintains  
22 general liability insurance in an amount not less than two hundred fifty  
23 thousand dollars (\$250,000) and submits proof of compliance with workers'  
24 compensation and unemployment insurance laws of the Commonwealth.

25 (b) Proof of insurance required in this subsection shall be submitted to the  
26 department~~[office]~~ prior to issuance or renewal of the active master plumber  
27 license required under this chapter.

1 (c) No license shall be valid without insurance as required in this subsection, and  
2 insurance carriers shall notify the department~~[office]~~ upon cancellation of the  
3 insurance of any licensee required to maintain insurance.

4 (d) The insurance required in this subsection shall not apply to an employee of a  
5 person, firm, or corporation engaged in plumbing as defined in this chapter.

6 ➔Section 1673. KRS 318.040 is amended to read as follows:

7 (1) An applicant for a master or journeyman plumber's license shall:

8 (a) Be at least eighteen (18) years of age;

9 (b) Be of good moral character;

10 (c) Be a citizen of the United States or be a resident alien who is authorized to  
11 work in the United States; and

12 (d) Possess all the other qualifications that may be prescribed by administrative  
13 regulations of the commissioner~~[executive director]~~.

14 (2) Except as otherwise provided in this chapter, no master or journeyman plumber's  
15 license shall be issued except upon a successful passage of an examination as  
16 prescribed by the department~~[office]~~.

17 (3) Examinations for a license as a master plumber or journeyman plumber shall be  
18 conducted at times and places fixed by the regulations of the  
19 commissioner~~[executive director]~~. Applicants for an examination shall furnish the  
20 information required by the commissioner~~[executive director]~~ and shall receive  
21 from the department~~[office]~~ due notice of the time and place of the examination.

22 (4) The department~~[office]~~ shall prepare or cause to be prepared under its supervision  
23 examinations consisting of written and practical tests with such questions and tests  
24 by which the department~~[office]~~ will determine:

25 (a) With respect to master plumber's license applicants, that applicants are  
26 qualified in view of the definitions, provisions, and purposes of this chapter to  
27 carry on responsibly, reasonably, and competently, the activities which a

1 licensed master plumber is authorized to engage in by this chapter; and

2 (b) With respect to journeyman plumber's license applicants, their knowledge and  
3 competency to carry on the activities which a licensed journeyman plumber is  
4 authorized to engage in by this chapter.

5 (5) The examination papers shall be preserved by the department~~{office}~~ for a period of  
6 one (1) year.

7 (6) The department~~{office}~~ may issue a license to any person who holds a valid license  
8 in another state if that state has a statewide plumbing code and, in the opinion of the  
9 Plumbing Code Committee, the other state's examination is at least equal to that of  
10 Kentucky and the other state agrees to reciprocate with Kentucky.

11 ➔Section 1674. KRS 318.050 is amended to read as follows:

12 Each application for a license as a master or journeyman plumber shall be accompanied  
13 by a reasonable fee as established by the department~~{office}~~.

14 ➔Section 1675. KRS 318.054 is amended to read as follows:

15 (1) The initial license for a master or journeyman plumber shall expire on the last day  
16 of the licensee's birth month in the following year. The department~~{office}~~ may  
17 reduce the license fee on a pro rata basis for initial licenses issued for less than  
18 twelve (12) months. Renewed licenses shall expire on the last day of the licensee's  
19 birth month of each year after the date of issuance of the renewed license.

20 (2) The department~~{office}~~ shall require an applicant for renewal of a license to show  
21 evidence of completing the continuing education requirements set forth by the  
22 department~~{office}~~, with advice from the State Plumbing Code Committee, in its  
23 administrative regulations issued under KRS 318.130.

24 (3) The department~~{office}~~ shall send each licensed master and journeyman plumber a  
25 notice advising them that the annual license renewal fee is due. The notice shall be  
26 sent to the licensee's last known address no later than thirty (30) days prior to the  
27 expiration of the license. The annual license renewal fee shall be a reasonable fee

1 set by regulation of the department~~{office}~~. The fee for the renewal of a master  
 2 plumber's license shall exceed the fee charged for a journeyman plumber's license.

- 3 (4) Any master or journeyman plumber who fails to renew his license prior to  
 4 expiration may have his license renewed upon payment of the required renewal fee,  
 5 a revival fee, and upon showing the completion of continuing education  
 6 requirements. The revival fee for a master plumber shall be five dollars (\$5) and for  
 7 a journeyman plumber three dollars (\$3). If the renewal and revival fees are not paid  
 8 one hundred eighty (180) days after the license expires, such licenses shall be  
 9 automatically canceled by operation of law for nonpayment; provided, however,  
 10 that such licenses may be reinstated upon payment of all delinquent renewal fees  
 11 plus a revival fee of ten dollars (\$10) for a master plumber and six dollars (\$6) for a  
 12 journeyman plumber. Upon presentation of proper evidence, the department~~{office}~~  
 13 may waive payment of any renewal or revival fee specified herein for persons  
 14 serving on active duty in the Armed Forces of the United States.

15 ➔Section 1676. KRS 318.064 is amended to read as follows:

16 The department~~{office}~~ may revoke or suspend any plumber's license issued by it upon  
 17 proof that the licensee has:

- 18 (1) Knowingly violated the provisions of this chapter or the Kentucky State Plumbing  
 19 Code, or the rules and regulations of the department~~{office}~~;
- 20 (2) Practiced fraud or deception in applying for or obtaining a license;
- 21 (3) Is incompetent to perform services as a licensed master plumber or a licensed  
 22 journeyman plumber;
- 23 (4) Permitted his or her license to be used directly or indirectly by another to obtain or  
 24 perform plumbing work or services; or
- 25 (5) Is guilty of such other unprofessional or dishonorable conduct of a character likely  
 26 to deceive or defraud the public.

27 ➔Section 1677. KRS 318.066 is amended to read as follows:

1 (1) No license shall be suspended or revoked by the department~~{office}~~ unless a  
 2 hearing has been conducted or an opportunity afforded therefor in accordance with  
 3 KRS Chapter 13B.

4 (2) A licensee aggrieved by a final order of the department~~{office}~~ suspending or  
 5 revoking a license may appeal therefrom to the Circuit Court of the county in which  
 6 the principal office of the office is located in accordance with KRS Chapter 13B.

7 ➔Section 1678. KRS 318.071 is amended to read as follows:

8 (1) There is hereby created a State Plumbing Code Committee which shall be  
 9 established within the Department~~{Office}~~ of Housing, Buildings and Construction  
 10 for administrative purposes. The State Plumbing Code Committee shall consist of  
 11 seven (7) members, one (1) of whom shall be a builder member of the Home  
 12 Builders Association of Kentucky, one (1) of whom shall be a member of the  
 13 Association of General Contractors, one (1) of whom shall be a member of the  
 14 Kentucky Master Plumbers Association, one (1) of whom shall be a member of the  
 15 Kentucky Society of Professional Engineers (who shall have a background in  
 16 sanitary engineering), one (1) of whom shall be a member of the American Institute  
 17 of Architects, one (1) of whom shall be a member of the United Association of  
 18 Journeyman Plumbers, and one (1) of whom shall be a member of the Mechanical  
 19 Contractors Association. Each member of the State Plumbing Code Committee  
 20 shall receive twenty-five dollars (\$25) per day for attending each meeting and shall  
 21 be reimbursed for all necessary expenses. The members of the committee shall be  
 22 appointed by the Governor from lists of three (3) names submitted by the above  
 23 mentioned organizations.

24 (2) Each member shall be appointed for and hold office a term of two (2) years or until  
 25 his or her successor is appointed and qualified.

26 (3) At all times in the filling of vacancies of membership on the committee the balance  
 27 of representation set out in subsection (1) shall be maintained.

1       ➔Section 1679. KRS 318.074 is amended to read as follows:

2       The committee shall elect from its members one (1) to serve as chairman, one (1) as vice  
3       chairman, and the commissioner~~[executive director]~~ of the Department~~[Office]~~ of  
4       Housing, Buildings and Construction or his or her designee shall serve as ex officio  
5       member of the committee (without a vote) and secretary. The committee shall meet at  
6       least quarterly and upon special call by the chairman or the secretary.

7       ➔Section 1680. KRS 318.077 is amended to read as follows:

8       The committee shall hold hearings, upon adequate notice to affected parties specifying  
9       the matters to be considered before the submission to the commissioner~~[executive~~  
10      ~~director]~~ of its suggested amendments to the code. No amendment of the code or any  
11      other related regulation shall be issued or promulgated by the department~~[office]~~ without  
12      the prior review and comment of the committee under the requirements of KRS  
13      198B.030(9) and (10) and 198B.040(11). Any person aggrieved by any rule, regulation, or  
14      amendment approved by the department~~[office]~~, within 30 days after such action has  
15      become final, may appeal therefrom to the Circuit Court. For the purposes of this section,  
16      "persons aggrieved" shall include any person directly or indirectly injured or threatened  
17      with injury on account of any such regulation, rule, or amendment, whether or not such  
18      person was a party to the proceedings out of which the order, rule, regulation, or  
19      amendment arose.

20      ➔Section 1681. KRS 318.080 is amended to read as follows:

21      (1) In order to conduct examinations for persons to qualify as licensed master plumbers  
22      or journeyman plumbers, the department~~[office]~~ shall appoint as examiners the  
23      following persons to a State Plumbers Examining Committee: An employee of the  
24      department~~[office]~~ and three (3) other persons who shall be licensed either as  
25      master or journeyman plumbers. The commissioner~~[executive director]~~ shall be an  
26      ex officio examiner and permanent commissioner of the committee. With the  
27      exception of the issuance of any order involving the revocation, suspension or

1 cancellation of a master or journeyman plumber's license, the  
 2 commissioner~~{executive-director}~~ may delegate to a subordinate employee in the  
 3 department~~{office}~~ the power to be present and participate, including the right to  
 4 vote, as his or her representative at any meeting, hearing or other proceeding of the  
 5 State Plumbers Examining Committee. Plumber examiners shall serve at the  
 6 pleasure of the department~~{office}~~.

7 (2) The department~~{office}~~ shall appoint assistant plumber examiners who shall be  
 8 qualified licensed master or journeyman plumbers who shall serve at the pleasure of  
 9 the department~~{office}~~. Assistant plumber examiners shall perform such duties as  
 10 are delegated to them by the State Plumbers Examining Committee.

11 (3) Plumber examiners and assistant plumber examiners shall receive no compensation  
 12 for their services but shall be reimbursed for their necessary traveling expenses.

13 ➔Section 1682. KRS 318.090 is amended to read as follows:

14 (1) The department~~{office}~~ shall appoint and assign plumbing inspectors to each county  
 15 subject to the provisions of this chapter.

16 (2) Each plumbing inspector shall have at least eight (8) years experience as a  
 17 journeyman or master plumber. At the time of his or her appointment he or she shall  
 18 be licensed in accordance with the provisions of this chapter.

19 ➔Section 1683. KRS 318.100 is amended to read as follows:

20 No person shall advertise or hold himself or herself out as a licensed master or licensed  
 21 journeyman plumber within the Commonwealth of Kentucky unless he or she is a holder  
 22 of a license from the department~~{office}~~ in accordance with the provisions of this  
 23 chapter.

24 ➔Section 1684. KRS 318.110 is amended to read as follows:

25 A company or individual principal may engage in the business of plumbing within any  
 26 county of the Commonwealth if some person connected with such a company or  
 27 individual principal in responsible charge of the plumbing work is a licensed master

1 plumber. Any master plumber, in responsible charge of plumbing work for a company or  
 2 individual engaged in the plumbing business, shall notify the department~~{office}~~ at any  
 3 time he or she commences or severs his or her connection with the company or individual  
 4 principal.

5 ➔Section 1685. KRS 318.130 is amended to read as follows:

6 In order to administer this chapter, the department~~{office}~~ shall promulgate and thereafter  
 7 from time to time may amend a code to be known as the Kentucky State Plumbing Code,  
 8 regulating the construction, installation, and alteration of plumbing and plumbing fixtures  
 9 and appliances, house sewers and private water supplies, and methods and materials to be  
 10 used therein within this state, using as a minimum standard the basic principles of the  
 11 National Plumbing Code Coordinating Committee, as evidenced by that committee's final  
 12 report of 1951 with variations thereof or additions thereto as the committee considers are  
 13 warranted by local, climatic, or other conditions. The code may also designate the number  
 14 of plumbing fixtures for public buildings. The department~~{office}~~ may adopt any other  
 15 reasonable rule or regulation to administer this chapter if the rule or regulation has been  
 16 subject to review and comment by the committee under the requirements of KRS  
 17 198B.030(9) and (10) and 198B.040(11). No rules or regulations so approved by the  
 18 committee shall become effective except upon adoption by the department~~{office}~~, in  
 19 satisfaction of the requirements of KRS Chapter 13A. The department~~{office}~~ shall  
 20 furnish to the committee proposed amendments to the code for the committee's review  
 21 and comment prior to their adoption by the department~~{office}~~. The department~~{office}~~  
 22 shall not promulgate any rules or regulations related to this chapter without granting the  
 23 committee the opportunity to comment on the administrative regulation.

24 ➔Section 1686. KRS 318.134 is amended to read as follows:

25 (1) No person, firm, or corporation shall:

26 (a) Construct, install, or alter, or cause to be constructed, installed, or altered, any  
 27 plumbing without first having procured a plumbing installation permit



1           therefor from the department{office};

2           (b) Use or continue to use, or permit the use or continued use of, any plumbing  
3           constructed, installed, or altered under a plumbing installation permit issued  
4           therefor where the department{office} through a duly authorized inspector,  
5           employee, or agent, finds that the plumbing was not constructed, installed, or  
6           altered in accordance with such permit and the Kentucky State Plumbing  
7           Code.

8           (2) All applications for plumbing installation permits shall be accompanied by plans  
9           and specifications of the proposed plumbing installation, location, and construction  
10          of the water supply system to be used. If an on-site sewage disposal system that  
11          does not have a surface discharge is proposed, a valid on-site sewage disposal  
12          permit issued by the Cabinet for Health and Family Services or its designated agent  
13          shall accompany the application.

14          (3) The department{office} shall fix a reasonable schedule of fees and charges to be  
15          paid for plumbing installation permits and the necessary inspections incident  
16          thereto. The department{office} shall also fix a reasonable schedule of fees and  
17          charges to be paid for necessary inspections of the construction, installation, or  
18          alteration of plumbing in public buildings.

19          ➔Section 1687. KRS 318.136 is amended to read as follows:

20          All license fees, permit and inspection fees and charges, and other moneys collected by  
21          the department{office}, under the provisions of this chapter and the rules and regulations  
22          of the department{office} adopted hereunder, shall be paid into the State Treasury and  
23          credited to a trust and agency fund to be used by the department{office} in carrying out  
24          the provisions of this chapter. No part of this fund shall revert to the general fund of the  
25          Commonwealth. All moneys held in a trust and agency fund or other fund to the credit of  
26          the department{office} for the administration and enforcement of this chapter on June 16,  
27          1960, are hereby transferred to the trust and agency fund herein created.

1        ➔Section 1688. KRS 318.140 is amended to read as follows:

- 2        (1) Any local government may, by ordinance, enact the Kentucky State Plumbing Code,  
3        regulating the construction, installation, or alteration of plumbing within such local  
4        government, providing for the issuance of plumbing installation permits and fixing  
5        permit and inspection fees. Two (2) or more local governments may, by ordinance  
6        of each local government, enact the plumbing code as described in this section  
7        which shall be jointly enforced and administered by said local governments within  
8        their boundaries. Agreements for joint enforcement shall conform to the provisions  
9        of KRS Chapter 65. The department~~{office}~~ may authorize any such local  
10       government or combination of local governments to administer, carry out, and  
11       enforce the Kentucky State Plumbing Code and the rules and regulations of the  
12       department~~{office}~~ relating thereto and to issue permits and make inspections  
13       thereunder within such local government, in which event a permit issued under the  
14       provisions of the local government plumbing code ordinance shall be deemed a  
15       permit issued by the department~~{office}~~; provided, however, that inspectors of the  
16       department~~{office}~~ shall have concurrent jurisdiction with local government  
17       plumbing inspectors in the enforcement in such local governments of the Kentucky  
18       State Plumbing Code.
- 19       (2) Any local government enacting a plumbing code ordinance may appoint and fix the  
20       compensation of local government plumbing inspectors. No person shall be eligible  
21       for appointment as a local government plumbing inspector unless he or she has at  
22       least eight (8) years' experience as a master or journeyman plumber. At the time of  
23       his or her appointment, he or she shall be licensed in accordance with the provisions  
24       of this chapter.
- 25       (3) Nothing contained in this chapter shall be construed as prohibiting a local  
26       government from collecting occupational license fees from persons, firms, or  
27       corporations engaged in the plumbing business.

1        ➔Section 1689. KRS 318.160 is amended to read as follows:

2        Except as otherwise provided by law or by regulation of the department{office}, no  
 3        person shall construct, install, or extensively alter any plumbing, sewerage, or water  
 4        supply system of any public building or establishment without having first obtained the  
 5        approval of the department{office} in writing. Detailed plans and specifications of the  
 6        proposed facility showing the plumbing system, sewage disposal system, and water  
 7        supply system shall be submitted to the department{office} prior to the construction or  
 8        alteration of the facility. In the event no public sewer is available, the plan shall include  
 9        the proposed type of sewage disposal system. In the event a sewage subsoil drainage  
 10       system is used, or some other type of on-site sewage disposal system that does not have a  
 11       surface discharge, the application for construction, installation, or alteration of such  
 12       system shall be submitted to the Cabinet for Health and Family Services or its designated  
 13       agent. All other plans and specifications shall be submitted in triplicate to the  
 14       department{office}. The department{office} shall notify the applicant in writing of the  
 15       approval or disapproval of the plans. The construction, installation, or alteration shall be  
 16       done in accordance with the approved plans.

17       ➔Section 1690. KRS 318.170 is amended to read as follows:

18       For the purpose of enforcing the provisions of this chapter and the State Plumbing Code,  
 19       officers, agents and inspectors of the department{office} shall have the power and  
 20       authority to enter upon premises at all reasonable times for the purpose of making  
 21       inspections, to interrogate all persons and to require the production of plumbing  
 22       installation permits and other evidence. Officers, agents, and inspectors of the  
 23       department{office} are empowered to issue a stop order to any owner, agent, or occupant  
 24       of real property whenever the plumbing thereon is found by the officer, agent or inspector  
 25       of the department{office} to be in violation of this chapter or the State Plumbing Code.

26       ➔Section 1691. KRS 318.180 is amended to read as follows:

27       (1) Notwithstanding the existence or pursuit of any other remedy (civil or criminal) the

1        department{office}, or its officers, agents, or inspectors, are hereby authorized to  
 2        institute and maintain actions to restrain and enjoin any violation of this chapter, the  
 3        State Plumbing Code, or the rules and regulations of the department{office} relating  
 4        thereto.

- 5        (2) City, county and Commonwealth's attorneys, and the Attorney General, shall within  
 6        their respective jurisdictions represent the department{office}, its officers, agents,  
 7        and inspectors, in the enforcement of the provisions of this chapter, the State  
 8        Plumbing Code, and the rules and regulations of the department{office} relating  
 9        thereto, but when the department{office} deems it necessary, it may employ, at its  
 10       discretion, special attorneys to assist the department{office}, or its officers, agents,  
 11       or inspectors, and may pay reasonable compensation, fees and other costs from any  
 12       unexpended plumbing funds.

13       ➔Section 1692. KRS 318.190 is amended to read as follows:

- 14       (1) The Circuit Court where the violation occurs shall have jurisdiction and venue in all  
 15       civil and injunctive actions instituted by the department{office} for the enforcement  
 16       of the provisions of KRS Chapter 318 and the State Plumbing Code and the orders  
 17       issued thereunder.
- 18       (2) The Franklin Circuit Court shall hold concurrent jurisdiction and venue in all civil  
 19       and injunctive actions instituted by the department{office}, or upon the secretary's  
 20       request by the Attorney General, for the enforcement of the provisions of KRS  
 21       Chapter 318, the State Plumbing Code and the orders issued thereunder and other  
 22       rules and regulations of the department{office}.
- 23       (3) The District Court where the violation occurs shall have jurisdiction and venue in  
 24       all criminal actions for the enforcement of the provisions of KRS Chapter 318 and  
 25       the State Plumbing Code and the orders issued thereunder. The Franklin Circuit  
 26       Court shall hold concurrent jurisdiction and venue on all appeals of criminal actions  
 27       for the enforcement of the provisions of KRS Chapter 318 and the State Plumbing

1 Code and the orders issued thereunder.

2 ➔Section 1693. KRS 318.200 is amended to read as follows:

3 (1) No water heating device shall be sold or offered for sale in the Commonwealth of  
4 Kentucky unless it contains a serial number on it. As used in this section, "water  
5 heating device" means any pressure vessel which heats, stores, and supplies potable  
6 water for domestic or commercial purposes other than for space heating.

7 (2) All retailers, wholesalers, and installers selling or offering for sale a water heating  
8 device shall, within thirty (30) days of the date of sale, forward a list of names and  
9 addresses of purchasers along with the serial numbers of the devices purchased to  
10 the department~~office~~ or to the appropriate agency of county or city government  
11 having jurisdiction.

12 ➔Section 1694. KRS 329A.025 is amended to read as follows:

13 (1) The board shall administer and enforce the provisions of KRS 329A.010 to  
14 329A.090 and shall evaluate the qualifications of applicants for licensure and issue  
15 licenses.

16 (2) The board shall:

17 (a) Implement the provisions of KRS 329A.010 to 329A.090 through the  
18 promulgation of administrative regulations in accordance with the provisions  
19 of KRS Chapter 13A;

20 (b) Promulgate administrative regulations to establish fees which shall not exceed  
21 the amounts necessary to generate sufficient funds to effectively carry out and  
22 enforce the provisions of KRS 329A.010 to 329A.090;

23 (c) Promulgate by administrative regulation an examination to be administered at  
24 least twice annually to license applicants. The examination shall be designed  
25 to measure knowledge and competence in private investigating, including but  
26 not limited to the following subject areas:

27 1. Federal and state constitutional principles;

- 1           2.    Court decisions related to activities which could result in liability for the
- 2                invasion of privacy or other activities;
- 3           3.    Eavesdropping and related offenses, assault and related offenses, search
- 4                and seizure laws, and laws regarding unlawful access to a computer;
- 5           4.    General weapons use and concealed weapons laws;
- 6           5.    Additional state criminal laws and related procedures that are relevant to
- 7                the practice of private investigating; and
- 8           6.    Additional subject areas as determined by the board; and
- 9    (d)   Promulgate by administrative regulation a code of professional practice and
- 10           conduct that shall be based upon generally recognized principles of
- 11           professional ethical conduct and be binding upon all licensees.
- 12   (3)   The board may:
- 13       (a)   Contract with the Office~~[Division]~~ of Occupations and Professions within the~~[~~
- 14           ~~Environmental—and]~~ Public Protection Cabinet for the provision of
- 15           administrative services;
- 16       (b)   Employ any persons it deems necessary to carry on the work of the board. The
- 17           board may define their duties and fix their compensation;
- 18       (c)   Develop or sponsor at least six (6) hours of continuing professional education
- 19           annually;
- 20       (d)   Approve and certify a forty (40) hour training class covering the subject areas
- 21           of the licensing examination;
- 22       (e)   Renew licenses and require continuing professional education as a condition
- 23           for renewal;
- 24       (f)   Waive the examination requirement for any applicant licensed in a reciprocal
- 25           state as prescribed in subsection (3)(m) of this section, who is licensed in
- 26           good standing in that state and meets all of the other requirements of KRS
- 27           329A.035;

- 1 (g) Suspend or revoke licenses, impose supervisory or probationary conditions
- 2 upon licensees, impose administrative disciplinary fines, or issue written
- 3 admonishments or reprimands, or any combination thereof;
- 4 (h) Issue subpoenas, examine witnesses, pay appropriate witness fees, administer
- 5 oaths, and investigate allegations of practices violating the provisions of KRS
- 6 329A.010 to 329A.090;
- 7 (i) Conduct hearings pursuant to KRS Chapter 13B and keep records and minutes
- 8 necessary to carry out the board's functions;
- 9 (j) Organize itself into two (2) panels to separate the functions of inquiry and
- 10 hearings. Each panel shall have the power to act as either an inquiry or hearing
- 11 panel. No member serving on the inquiry panel shall serve on the hearing
- 12 panel for any one (1) particular case. Any final decision of the hearing panel
- 13 shall be considered as the final decision of the board and the hearing panel
- 14 may exercise all powers granted to the board pursuant to KRS Chapter 13B;
- 15 (k) Utilize mediation as a technique to resolve disciplinary matters;
- 16 (l) Seek injunctive relief in the Circuit Court of the county where the alleged
- 17 unlawful practice occurred to stop the unlawful practice of private
- 18 investigating by unlicensed persons or companies; and
- 19 (m) Negotiate and enter into reciprocal agreements with appropriate officials in
- 20 other states to permit licensed investigation companies and private
- 21 investigators who meet or exceed the qualifications established in KRS
- 22 329A.010 to 329A.090 to operate across state lines under mutually acceptable
- 23 terms.

24 ➔Section 1695. KRS 334.170 is amended to read as follows:

25 The Office~~[Division]~~ of Occupations and Professions in the~~[Environmental and]~~ Public  
 26 Protection Cabinet shall provide administrative aid to the board to assist it in the  
 27 discharge of its duties.

➔Section 1696. KRS 335.050 is amended to read as follows:

- (1) There is hereby created the Kentucky Board of Social Work, consisting of seven (7) members appointed by the Governor. One (1) member shall be a certified social worker under the provisions of KRS 335.010 to 335.160 and 335.990. One (1) member shall be a licensed social worker under the provisions of KRS 335.010 to 335.160 and 335.990. One (1) member shall be a licensed clinical social worker licensed under the provisions of KRS 335.010 to 335.160 and 335.990. Three (3) members shall be persons licensed by the board at any level, at the discretion of the Governor. One (1) member shall be a citizen at large who is not associated with or financially interested in the practice or business regulated. With the exception of the citizen at large, each member shall be appointed from a list of names of qualified persons submitted by any interested parties. The Governor may request the submission of additional names.
- (2) Members of the board shall be appointed for terms of four (4) years except appointments to fill vacancies caused by a reason other than the expiration of a member's term. Upon recommendation of the board, made after notice and hearing, the Governor may remove any member of the board for incompetence, neglect of duty, or malfeasance in office.
- (3) All vacancies shall be filled by the Governor.
- (4) The board shall organize upon appointment and qualification of its members, and shall elect annually from its membership a chairman, vice chairman, and a secretary. The board shall meet as frequently as it deems necessary, but not less than two (2) times each year, at such times and places as the board designates. Additional meetings may be held upon call of the chairman or upon the written request of three (3) members of the board. Four (4) members of the board shall constitute a quorum.
- ~~[(5) The board may be attached, for administrative purposes, to the Division of Occupations and Professions in the Environmental and Public Protection Cabinet.]~~



1        ➔ Section 1697. KRS 335.325 is amended to read as follows:

2        The board may:

- 3        (1) Employ needed personnel ~~and contract with the Division of Occupations and~~  
4        ~~Professions within the Environmental and Public Protection Cabinet for the~~  
5        ~~provision of administrative services];~~
- 6        (2) Issue subpoenas, examine witnesses, pay appropriate witness fees, administer oaths,  
7        and investigate allegations of practices violating the provisions of this chapter;
- 8        (3) Seek injunctive relief in Franklin Circuit Court to stop the unlawful practice of  
9        marriage and family therapy by unlicensed persons;
- 10       (4) Conduct hearings pursuant to KRS Chapter 13B and keep records and minutes  
11       necessary to carry out the functions of this chapter;
- 12       (5) Suspend or revoke licenses or permits or impose supervisory or probationary  
13       conditions upon licensees or permit holders, or impose administrative disciplinary  
14       fines, issue written reprimands or admonishments, or any combination thereof;
- 15       (6) Grant retired or inactive licensure status under conditions set forth by the board by  
16       the promulgation of administrative regulations;
- 17       (7) Enter into reciprocal agreements with boards of marriage and family therapy in  
18       other states having licensure qualifications and requirements that meet or exceed  
19       those provided in this chapter;
- 20       (8) Organize itself into two (2) panels to separate the functions of inquiry and hearings.  
21       Each panel shall have the power to act as either an inquiry or hearing panel. No  
22       member serving on the inquiry panel shall serve on the hearing panel for any one  
23       particular case. Any final decision of the hearing panel shall be considered as the  
24       final decision of the board and the hearing panel may exercise all powers granted to  
25       the board pursuant to KRS Chapter 13B; and
- 26       (9) Utilize mediation as a technique to resolve disciplinary matters.

27       ➔ Section 1698. KRS 335.615 is amended to read as follows:

- 1 The board shall meet at least twice a year, in the spring and the fall. The board shall elect  
 2 a chair at the fall meeting who shall serve a one (1) year term. The board shall:
- 3 (1) Approve or deny applications for certification submitted according to the provisions  
 4 of KRS 335.600 to 335.699;
  - 5 (2) Approve the examination required of applicants for certification, provide for the  
 6 administration and grading of the examination, and provide for other matters  
 7 relating to certification in the profession of fee-based pastoral counseling as  
 8 promulgated in administrative regulations;
  - 9 (3) Review the credentials of certificate holders to determine eligibility for certification  
 10 renewal, including payment of fees authorized in KRS 335.625;
  - 11 (4) Certify those fee-based pastoral counseling applicants who satisfy the requirements  
 12 of KRS 335.600 to 335.699, including payment of fees authorized in KRS 335.620;
  - 13 (5) Adopt a code of ethics for certified fee-based pastoral counselors by promulgation  
 14 of administrative regulations;
  - 15 (6) Promulgate administrative regulations, in accordance with KRS Chapter 13A, to  
 16 implement the purposes of KRS 335.600 to 335.699;
  - 17 ~~(7) Contract with the Division of Occupations and Professions within the~~  
 18 ~~Environmental and Public Protection Cabinet for the provision of administrative~~  
 19 ~~services;~~
  - 20 ~~(8)}~~ Investigate suspected violations of KRS 335.600 to 335.699;
  - 21 ~~(8)}~~~~(9)}~~ Institute and maintain actions to restrain or enjoin persons who violate the  
 22 certification provisions of KRS 335.600 to 335.699; and
  - 23 ~~(9)}~~~~(10)}~~ Submit an annual report to the Governor and to the Legislative Research  
 24 Commission by January 1 of each year, listing all hearings conducted by the board,  
 25 any decisions rendered, and a current roster of all certified fee-based pastoral  
 26 counselors.
  - 27 ➔Section 1699. KRS 336.010 is amended to read as follows:

1 As used in this chapter, unless the context requires otherwise:

2 (1) "~~Secretary~~~~[Commissioner]~~" means secretary~~[commissioner]~~ of the~~[Department of~~  
3 ~~]Labor [under the direction and supervision of the secretary of the Environmental~~  
4 ~~and Public Protection]~~Cabinet; and

5 (2) "~~Cabinet~~~~[Department]~~" means ~~[Department of ]Labor~~ Cabinet~~]; and~~

6 (3) ~~"Secretary" means the secretary of the Environmental and Public Protection~~  
7 ~~Cabinet].~~

8 ➔Section 1700. KRS 336.015 is amended to read as follows:

9 (1) The ~~secretary~~~~[commissioner]~~ of the ~~[Department of ]Labor~~ Cabinet shall have the  
10 duties, responsibilities, power, and authority relating to labor, wages and hours,  
11 occupational safety and health of employees, child labor, apprenticeship, workers'  
12 compensation, and all other matters previously under the jurisdiction of the  
13 Department of Labor~~[Cabinet]~~.

14 (2) The ~~[Department of ]Labor~~ Cabinet shall consist of the Office of the  
15 Secretary~~[Occupational Safety and Health]~~, the Department~~[Office]~~ of Workers'  
16 Claims~~[Labor Management Relations and Mediation]~~, and the Department~~[Office]~~  
17 of Workplace Standards~~], and the Division of Administrative Services. Each of the~~  
18 ~~offices shall be headed by an executive director and each division shall be headed~~  
19 ~~by a division director. Executive directors and division directors shall be appointed~~  
20 ~~by the secretary with the approval of the Governor as required by KRS 12.050].~~

21 (3) The following agencies are attached to the cabinet~~[department]~~ for administrative  
22 purposes only:

23 (a) Kentucky Labor-Management Advisory Council;

24 (b) Kentucky Occupational Safety and Health Review Commission~~[Employees'~~  
25 ~~Insurance Association]~~;

26 (c) State Labor Relations Board;

27 (d) Workers' Compensation Funding Commission;

- (e) ~~{Workers' Compensation Advisory Council;~~  
 (f) Occupational Safety and Health Standards Board;  
 (g) Prevailing Wage Review Board;  
 (h) Apprenticeship and Training Council;  
 (i) Employers' Mutual Insurance Authority;  
 (j) Office of General Administration and Program Support for Shared Services, which shall be headed by an executive director appointed by the Governor in accordance with KRS 12.040 upon recommendation from the secretaries of the Energy and Environment Cabinet, the Labor Cabinet, and the Public Protection Cabinet. The office is composed of the following divisions:  
     1. Division of Human Resource Management;  
     2. Division of Fiscal Management;  
     3. Division of Budgets; and  
     4. Division of Information Services~~{Workers' Compensation Nominating Commission}; and~~  
 (k) Office of Inspector General for Shared Services, which shall be headed by an executive director appointed by the Governor in accordance with KRS 12.040 upon recommendation from the secretaries of the Energy and Environment Cabinet, the Labor Cabinet, and the Public Protection Cabinet~~{Workers' Claims}~~.

➔Section 1701. KRS 336.020 is amended to read as follows:

- (1) The Department~~{Office}~~ of Workplace Standards shall be headed by a commissioner appointed by the Governor in accordance with KRS 12.040~~{an executive director}~~ and shall be divided for administrative purposes into the Division of Employment Standards, Apprenticeship and Mediation, the Division of Occupational Safety and Health Compliance, the Division of Occupational Safety

1 and Health Education and Training,~~[;]~~ and the Division of Workers' Compensation  
 2 Funds. Each of these divisions shall be headed by a director appointed by the  
 3 secretary and approved by the Governor in accordance with KRS 12.050.

- 4 (2) The Department~~[Office]~~ of Workers' Claims shall be headed~~[administered]~~ by a  
 5 commissioner who is nominated by the Workers' Compensation Nominating  
 6 Commission, appointed by the Governor, and confirmed by the Senate in  
 7 accordance with KRS 342.213 and 342.228. The department~~[an executive director~~  
 8 ~~and]~~ shall be divided for administrative purposes into the Office of Administrative  
 9 Law Judges, the Office of General Counsel for Workers' Claims, the  
 10 Division~~[Divisions]~~ of Claims Processing~~[and Appeals]~~, the Division of  
 11 Information and Research, the Division of Security and Compliance, and the  
 12 Division of Ombudsman and Workers' Compensation Specialist Services. The  
 13 Office of Administrative Law Judges shall be headed by a chief administrative  
 14 law judge appointed in accordance with KRS 342.230. Each division in the  
 15 department shall be headed by a director appointed by the commissioner and  
 16 approved by the Governor in accordance with KRS 12.050 and 342.230. The  
 17 following agencies are attached to the Department of Workers' Claims for  
 18 administrative purposes only:

19 (a) Workers' Compensation Board;

20 (b) Workers' Compensation Advisory Council; and

21 (c) Workers' Compensation Nominating Commission.

- 22 (3) The Office of General Counsel for the Labor Cabinet~~[Occupational Safety]~~ and  
 23 ~~[Health shall be administered by an executive director and shall be divided for~~  
 24 ~~administrative purposes into]~~ the Division of Management Services are attached to  
 25 the Office of the Secretary of the Labor Cabinet~~[Compliance and the Division of~~  
 26 ~~Education and Training]~~.

27 ➔Section 1702. KRS 336.030 is amended to read as follows:

1 The ~~secretary~~~~[commissioner]~~, with the approval of the ~~{secretary of the Environmental~~  
 2 ~~and Public Protection Cabinet and the }~~Governor, shall appoint necessary deputies,  
 3 attorneys, statisticians, inspectors and other employees and fix their salaries according to  
 4 law. These employees shall receive their actual necessary expenses.

5 ➔Section 1703. KRS 336.040 is amended to read as follows:

- 6 (1) The ~~{Department of }~~Labor Cabinet shall exercise all administrative functions of  
 7 the state concerned with employer-employee relationships, including the safety of  
 8 workers and workers' compensation.
- 9 (2) The cabinet~~{department}~~ shall:
- 10 (a) Promote friendly and cooperative relations between employers and
  - 11 employees;
  - 12 (b) Accumulate and publish industrial statistics and aid and encourage the
  - 13 development of new industries and the expansion of existing industries in
  - 14 Kentucky;
  - 15 (c) Encourage, promote, and develop fair practices both by employers and
  - 16 employees; discourage and eliminate as far as practicable all unfair practices
  - 17 by either; and enforce laws relating to unfair practices;
  - 18 (d) Foster, promote, and develop the welfare of both wage earners and industries
  - 19 in Kentucky;
  - 20 (e) Improve working and living conditions of employees, and advance their
  - 21 opportunities for profitable employment; and
  - 22 (f) Inquire into the causes of accidental injuries and occupational diseases arising
  - 23 out of and in the course of employment, and advance measures for the
  - 24 prevention of accidents and occupational diseases and for the improvement of
  - 25 sanitary conditions in places of employment.

26 ➔Section 1704. KRS 336.050 is amended to read as follows:

27 The ~~secretary~~~~[commissioner]~~ in person or by representative shall:

- 1 (1) Investigate and ascertain the wages of all employees employed in this state.
- 2 (2) Enter the place of business or employment of any employer of employees to  
3 examine and inspect all books, registers, payrolls, and other records that have a  
4 bearing upon the question of wages of employees and to ascertain whether the  
5 orders of the secretary~~[commissioner]~~ are complied with; and
- 6 (3) Require from the employer a full and correct statement in writing when the  
7 secretary~~[commissioner]~~ or the secretary's~~[his]~~ representative considers it  
8 necessary, of the wages paid to all employees in his or her employment.
- 9 (4) Upon complaint, prosecute any violation of any of the provisions of any law which  
10 it is his or her duty to administer or enforce. The secretary~~[commissioner]~~ may  
11 enter into reciprocal agreements with the corresponding labor agency or official of  
12 any other state to collect in the other state claims assigned to the  
13 secretary~~[commissioner]~~. To the extent allowed by a reciprocal agreement, the  
14 secretary~~[commissioner]~~ may maintain actions in the courts of another state to  
15 collect claims and judgments for wages and assign claims and judgments to the  
16 agency or official of another state for collection. If a reciprocal agreement extends a  
17 like comity to cases arising in the Commonwealth, the secretary~~[commissioner]~~  
18 may maintain actions in the courts of the Commonwealth to collect claims and  
19 judgments for wages arising in the other state in the same manner and to the same  
20 extent that actions are authorized when arising in the Commonwealth.

21 ➔ Section 1705. KRS 336.060 is amended to read as follows:

- 22 (1) In the conduct of an investigation or hearing, the secretary~~[commissioner]~~ or any  
23 authorized deputy may issue subpoenas to compel the attendance of witnesses and  
24 parties and the production of books, papers, and records competent and relevant to  
25 the matter under investigation; administer oaths; examine witnesses under oath;  
26 take the verification or proof of written instruments; and take testimony,  
27 depositions, and affidavits to carry out any law over which the cabinet~~[department]~~

1 has jurisdiction.

2 (2) When a person fails to comply with a cabinet~~[departmental]~~ subpoena, the Circuit  
3 Court of the county in which the person is found, resides, or has his principal place  
4 of business may, upon application of the secretary~~[commissioner]~~, his or her  
5 authorized representatives, or the party requesting the subpoena, issue an order  
6 requiring compliance. In any proceeding brought under this section, the Circuit  
7 Court having issued said order of compliance may modify or set aside the subpoena.

8 (3) Subpoenas issued under this section may be served by an inspector or other  
9 authorized representative of the cabinet~~[department]~~, at any place in the state.

10 ➔Section 1706. KRS 336.070 is amended to read as follows:

11 The cabinet~~[department]~~ shall make investigations, collect and compile statistics and  
12 report on the conditions of industries, labor and unemployment, and upon all matters  
13 relating to employer-employee relations and working conditions. Complete permanent  
14 records shall be made of all investigations, showing date of examination, condition in  
15 which the establishment was found, and changes ordered.

16 ➔Section 1707. KRS 336.080 is amended to read as follows:

17 The secretary~~[commissioner]~~ may have inspected any place of employment affected by or  
18 subject to any law of this state relating to the employment of labor, except places of  
19 employment within the jurisdiction of the Department for Natural Resources. In the  
20 discharge of his or her duties, the secretary~~[commissioner]~~ or the secretary's~~[his]~~  
21 authorized deputy~~[s]~~ may enter places of employment at any reasonable time. Upon  
22 request, the cabinet~~[department]~~ shall furnish to any employer a detailed report of any  
23 inspection in his or her place of business.

24 ➔Section 1708. KRS 336.090 is amended to read as follows:

25 (1) The cabinet~~[department]~~ shall be furnished with a copy of all the laws and rulings  
26 of the secretary for health and family services affecting sanitary conditions in places  
27 of employment, not covered by the labor laws of the state, and shall report in



1 writing to the state, county, or city health authorities any violations coming under  
 2 the observation of its inspectors while visiting places of employment in the regular  
 3 performance of their duty.

- 4 (2) The inspectors shall be furnished with a copy of all the laws and rulings of the  
 5 Department~~[Office]~~ of Housing, Buildings and Construction relating to fire hazards  
 6 in places of employment, and shall report in writing to the state, county, or city  
 7 authorities any violations coming under their observation while visiting places of  
 8 employment in the regular performance of their duty.

9 ➔Section 1709. KRS 336.100 is amended to read as follows:

10 Within one (1) month after any employer begins to occupy a factory, workshop, mill or  
 11 other place of employment he or she shall notify the cabinet~~[department]~~, in writing, of  
 12 such occupancy. If the employer is a corporation, the notice shall state the legal title of  
 13 the corporation and name of an agent upon whom service of summons can be made; and  
 14 if a firm, the individual names of members of the firm and its legal title.

15 ➔Section 1710. KRS 336.110 is amended to read as follows:

16 No person shall refuse or attempt to prevent the admission of any inspector of the  
 17 cabinet~~[department]~~ to any place which he or she is required by law to inspect, at any  
 18 reasonable hour, or during the working hours of the persons employed there, or interfere  
 19 with the performance of the official duties of any inspector.

20 ➔Section 1711. KRS 336.120 is amended to read as follows:

21 The secretary~~[commissioner]~~, with the approval of the Governor, may enter into  
 22 cooperative agreements with appropriate agencies of the federal government, whereby  
 23 Acts of Congress and regulations issued in pursuance thereof affecting the employment of  
 24 labor within this state may be administered, supervised, inspected, and enforced by the  
 25 cabinet~~[department]~~. Similar agreements may be entered into by the  
 26 secretary~~[commissioner]~~ with the approval of the Governor, for the cooperation of  
 27 federal agencies in the enforcement of state laws whose enforcement is vested in the

1 secretary~~[commissioner]~~.

2 ➔Section 1712. KRS 336.140 is amended to read as follows:

3 The secretary~~[commissioner]~~ may inquire into the causes of strikes, lockouts, and other  
 4 disputes between employers and employees, and endeavor to effect an amicable  
 5 settlement. He or she may create boards to which disputes between employers and  
 6 employees may be submitted on request of both the employer and the employees for  
 7 mediation. Where a joint wage agreement, existing between an employer and any labor  
 8 organization, provides for the settlement of disputes, any disputes that arise shall be  
 9 settled by the terms of the contract, and when so settled shall be binding and final upon  
 10 the secretary~~[commissioner]~~.

11 ➔Section 1713. KRS 336.151 is amended to read as follows:

- 12 (1) It shall be the duty of the secretary~~[commissioner]~~, in order to prevent or minimize  
 13 interruptions growing out of labor disputes, to assist parties to labor disputes to  
 14 settle such disputes through conciliation and mediation.
- 15 (2) The secretary~~[commissioner]~~ may proffer his or her services in any labor dispute  
 16 either upon his or her own motion or upon the request of one or more of the parties  
 17 to the dispute. Whenever the secretary~~[commissioner]~~ proffers his or her services  
 18 in any dispute and the services of the secretary~~[commissioner]~~ have been accepted,  
 19 it shall be the duty of the secretary~~[commissioner]~~ to put himself or herself in  
 20 communication with the parties and to use his or her best efforts, by mediation and  
 21 conciliation, to bring them to agreement.
- 22 (3) If the secretary~~[commissioner]~~ is not able to bring the parties to agreement by  
 23 mediation within a reasonable time, he or she shall seek to induce the parties  
 24 voluntarily to seek other means of settling the dispute without resort to strike,  
 25 lockout, or other coercion. The failure or refusal of either party to agree to any  
 26 procedure suggested by the secretary~~[commissioner]~~ shall not be deemed a  
 27 violation of any duty or obligation imposed by KRS 336.151 and 336.152.

1        ➔Section 1714. KRS 336.152 is amended to read as follows:

2        In order to prevent or minimize interruptions growing out of labor disputes, employees  
3        and employers and their representatives[,] shall:

- 4        (1) Exert every reasonable effort to make and maintain agreements concerning rates of  
5        pay, hours, and working conditions, including provision for adequate notice of any  
6        proposed change in the terms of such agreements;
- 7        (2) Whenever a dispute arises over the terms or application of a collective-bargaining  
8        agreement and a conference is requested by a party or prospective party thereto,  
9        arrange promptly for such a conference to be held and endeavor in such conference  
10       to settle such dispute expeditiously;
- 11       (3) In case such dispute is not settled by conference, participate fully and promptly in  
12       such meetings as may be undertaken by the secretary~~commissioner~~ under KRS  
13       336.151 and 336.152 for the purpose of aiding in a settlement of the dispute.

14       ➔Section 1715. KRS 336.156 is amended to read as follows:

- 15       (1) Any individual, partnership, association or corporation who represents, advises or  
16       acts as consultant or spokesman for any party to labor/management negotiations or  
17       arbitration conducted in Kentucky shall be, for the purposes of this section, known  
18       as third parties.
- 19       (2) Prior to representing or agreeing to represent any party to any labor/management  
20       negotiations or arbitration, all third parties shall notify the secretary~~commissioner~~  
21       of such intent.
- 22       (3) The secretary~~commissioner~~ shall require third parties to labor/management  
23       negotiations or arbitration to report such information as may assist the  
24       cabinet~~department~~ in determining whether such third party is to be certified to  
25       engage in or render advice on negotiations or any matter under arbitration.
- 26       (4) The secretary~~commissioner~~ shall offer mediation and arbitration services  
27       elsewhere provided by law to all parties to negotiations or arbitration where third

1 party intervention is contemplated.

2 (5) The secretary~~[commissioner]~~ shall promulgate regulations to implement the  
3 requirements of this section; regulations are to include but not be limited to:  
4 definitions, filing requirements, notification procedures and reasonable penalties for  
5 failure to comply.

6 (6) The provisions of this section shall not apply to full-time employees of any party to  
7 negotiations or arbitration nor to any third party licensed to do business in Kentucky  
8 under any other section of Kentucky Revised Statutes.

9 (7) No third party shall participate in or offer advice on negotiations or arbitration in  
10 the Commonwealth of Kentucky until the provisions of this section have been met.

11 ➔Section 1716. KRS 336.160 is amended to read as follows:

12 The secretary~~[commissioner]~~ shall present biennial reports to the General Assembly  
13 giving statistical data relating to employment and unemployment in the state such as the  
14 hours and wages of employees, cost of living, the amount of labor required, the estimated  
15 number and classification of persons unemployed, the estimated number of persons  
16 depending on daily labor for support, the probable chances of increased employment, the  
17 number of unemployed depending on public relief, facts relating to industrial accidents,  
18 the workers' compensation for industrial injuries, labor disputes, and facts relating to acts  
19 of the cabinet~~[department]~~ in the enforcement of the law and its work generally.

20 ➔Section 1717. KRS 336.162 is amended to read as follows:

21 (1) There is hereby created the Commonwealth of Kentucky Labor-Management  
22 Advisory Council which shall consist of eighteen (18) members. One (1) member of  
23 the council shall be the secretary~~[commissioner]~~ of the ~~[Department of ]~~Labor  
24 Cabinet, and one (1) member shall be the secretary of economic development, who  
25 shall be ex officio nonvoting members of the council. The other members of the  
26 council shall be appointed by the Governor for terms of four (4) years and until their  
27 successors have been appointed and have qualified.

- 1 (2) Vacancies shall be filled by appointment by the Governor for the unexpired term of  
 2 the member whose office is vacant and the appointment shall be made within sixty  
 3 (60) days of the occurrence of the vacancy.
- 4 (3) In making appointments to the council, the Governor shall appoint eight (8)  
 5 members representing management and eight (8) members representing labor. The  
 6 ~~secretary~~~~commissioner~~ of the ~~Department of~~Labor Cabinet shall serve as  
 7 chairman of the council.
- 8 (4) Upon the expiration of the terms of members appointed in 1978 the next  
 9 appointments shall be made as follows: Two (2) labor and two (2) management  
 10 members shall be appointed for a term of one (1) year; two (2) labor and two (2)  
 11 management members shall be appointed for a term of two (2) years; two (2) labor  
 12 and two (2) management members shall be appointed for a term of three (3) years;  
 13 and two (2) labor and two (2) management members shall be appointed for a term  
 14 of four (4) years. Thereafter all appointments shall be for a term of four (4) years.  
 15 Such appointments shall be made by the Governor within thirty (30) days after the  
 16 expiration of the term of any member.
- 17 (5) The council shall meet at least two (2) times each year and at other times on call of  
 18 the chairman or a majority of the members. Nine (9) members of the council shall  
 19 constitute a quorum for the transaction of business.
- 20 (6) The council shall be attached to the ~~Department of~~Labor Cabinet for  
 21 administrative purposes.
- 22 ➔Section 1718. KRS 336.164 is amended to read as follows:
- 23 (1) The council shall function as an advisory agent of state government and provide  
 24 leadership and assistance for labor and management in this state, and shall serve to  
 25 effect improved labor-management relations within the state, and to thereby attract  
 26 and encourage new and existing industry in this state.
- 27 (2) The council shall not infringe upon or assume the responsibilities, duties or

functions of the ~~{Department of }~~Labor Cabinet or Cabinet for Economic Development. The council may make recommendations to the Governor and the Legislature on matters relating to labor-management problems in this state and any other matter it deems necessary.

(3) Meetings of the council may be held at any location in this state; however the principal office of the council will be located in Frankfort, Kentucky.

(4) The secretary~~{commissioner}~~ of the ~~{Department of }~~Labor Cabinet shall supply necessary staff and supplies to the council as well as funds for reimbursing each member for reasonable and necessary expenses incurred as a result of attending council meetings, and he or she shall act as the executive secretary of the council. The ~~{executive }~~director of the Division~~{Office}~~ of Employment Standards, Apprenticeship~~{Labor Management Relations}~~ and Mediation shall be responsible for the coordination of such staff and supplies.

➔Section 1719. KRS 336.165 is amended to read as follows:

The Division~~{Office}~~ of Employment Standards, Apprenticeship~~{Labor Management Relations}~~ and Mediation shall, subject to appropriation from the General Assembly or funds made available to the division~~{office}~~ from any other public or private source, provide grants-in-aid to labor-management relations organizations that include both labor and management representatives. An organization shall use a grant-in-aid for the purpose of improving labor-management relations or improving communications with respect to subjects of mutual interest or concern to labor and management. The division~~{office}~~ shall not provide a grant-in-aid to any organization which interferes with collective bargaining in any plant or industry. The Division~~{Office}~~ of Employment Standards, Apprenticeship~~{Labor Management Relations}~~ and Mediation shall promulgate administrative regulations necessary to carry out this section.

➔Section 1720. KRS 336.1661 is amended to read as follows:

As used in KRS 336.1662 to 336.1664 unless the context clearly requires otherwise:

1 (1) "Arbitrator" means a neutral individual to whom the parties involved in a labor  
 2 dispute submit their differences for a final and binding decision in accordance with  
 3 the provisions of KRS 336.1662 to 336.1664; and

4 (2) "Roster" means the list of labor arbitrators prepared and maintained by the  
 5 ~~secretary~~~~commissioner~~ consisting of persons who meet the criteria set forth in  
 6 administrative regulations promulgated by the ~~secretary~~~~commissioner~~ in  
 7 accordance with the provisions of KRS Chapter 13A.

8 ➔Section 1721. KRS 336.1662 is amended to read as follows:

9 (1) The ~~secretary~~~~commissioner~~ shall:

- 10 (a) Maintain a roster of qualified arbitrators from which arbitrators provided  
 11 pursuant to this section shall be selected;
- 12 (b) Refer or provide without charge, upon request of the party or parties to an  
 13 agreement to arbitrate, a qualified arbitrator or a panel of qualified arbitrators;
- 14 (c) Assure that the needs of the parties requesting his or her services are served.  
 15 To accomplish this purpose he or she may establish through administrative  
 16 regulations procedures for the preparation of panels or the appointment of  
 17 arbitrators, including consideration of such factors as background, experience,  
 18 qualifications, availability, geographical location and the expressed preference  
 19 of the parties; and
- 20 (d) Prescribe through administrative regulations a fee schedule and reporting  
 21 requirements to which arbitrators listed on the roster shall subscribe.

22 (2) The ~~secretary~~~~commissioner~~ shall not have the power or authority to:

- 23 (a) Compel parties to arbitrate or agree to arbitration;
- 24 (b) Enforce an agreement to arbitrate;
- 25 (c) Compel parties to agree to a particular arbitrator;
- 26 (d) Influence, alter or set aside decisions of arbitrators provided pursuant to this  
 27 section, KRS 336.1663 and 336.1664; or

1 (e) Compel, deny or modify payment of compensation to an arbitrator.

2 ➔Section 1722. KRS 336.1663 is amended to read as follows:

3 (1) Persons listed on the roster:

4 (a) Shall comply with the rules and regulations promulgated by the  
5 secretary~~commissioner~~ pertaining to arbitration and ethical standards and  
6 procedures; and

7 (b) Who are selected or appointed to hear arbitration matters do not become  
8 employees of the ~~Department of~~ Labor Cabinet by virtue of their listing,  
9 selection or appointment.

10 (2) Following selection or appointment, the arbitrator's relationship is solely with the  
11 parties, except that arbitrators are subject to the fee schedule and reporting  
12 requirements set forth in subsection (1)(d) of KRS 336.1662. Provided that, the  
13 secretary~~commissioner~~ may appoint in accordance with the provisions of KRS  
14 Chapter 18A such persons as he or she deems necessary to provide the services  
15 described in KRS 336.1662 to 336.1664.

16 ➔Section 1723. KRS 336.1664 is amended to read as follows:

17 The secretary~~commissioner~~ shall in accordance with KRS Chapter 13A promulgate  
18 such rules and regulations as he or she deems necessary to effectuate the purposes of  
19 KRS 336.1662 and 336.1663.

20 ➔Section 1724. KRS 336.210 is amended to read as follows:

21 (1) If a plan or custom exists in any industry under which the employees contribute to  
22 the payment of any physician or surgeon for furnishing treatment, by deductions  
23 from their wages through the office of the employer, a meeting of such employees  
24 may be called by any ten (10) of them, as they consider best to bring to the notice of  
25 all employees affected that the meeting is to be held. Those at the meeting, by a  
26 majority determination, shall authorize two (2) of their number to represent all  
27 employees in that plant so affected, and when the management of the plant is



1 notified by the employees of their action, it shall forthwith select two (2) persons to  
2 represent it.

3 (2) The persons selected shall meet and select a physician or surgeon for the plant. If no  
4 selection is made within three (3) days, all questions before them shall be referred to  
5 the secretary,~~[commissioner]~~ who shall act as umpire. His or her decision shall be  
6 final. No physician or surgeon shall be employed and paid by deductions from the  
7 wages of employees except as provided in this section.

8 (3) Any physician or surgeon selected under this section shall be employed for a  
9 definite term, not to exceed four (4) years, and may be removed at any time for  
10 gross inefficiency or misconduct in the same manner in which he or she was  
11 selected.

12 ➔Section 1725. KRS 336.985 is amended to read as follows:

13 (1) The secretary,~~[commissioner]~~, or any person authorized to act in his or her behalf,  
14 shall initiate enforcement of civil penalties imposed in KRS Chapters 336, 337, and  
15 339.

16 (2) Any civil penalty imposed pursuant to KRS Chapter 336, 337, or 339 may be  
17 compromised by the secretary,~~[commissioner]~~ or the secretary's~~[his]~~ designated  
18 representative. In determining the amount of the penalty or the amount agreed upon  
19 in compromise, the secretary,~~[commissioner]~~, or the secretary's~~[his]~~ designated  
20 representative, shall consider the appropriateness of the penalty to the size of the  
21 business of the person charged, the gravity of the violation, the number of times the  
22 person charged has been cited, and the good faith of the person charged in  
23 attempting to achieve compliance, after notification of the violation.

24 (3) If a civil penalty is imposed pursuant to this section, a citation shall be issued which  
25 describes the violation which has occurred and states the penalty for the violation.  
26 If, within fifteen (15) working days from the receipt of the citation, the affected  
27 party fails to pay the penalty imposed, the secretary,~~[commissioner]~~, or any person

1 authorized to act in his or her behalf, shall initiate a civil action to collect the  
 2 penalty. The civil action shall be taken in the court which has jurisdiction over the  
 3 location in which the violation occurred.

4 ➔Section 1726. KRS 336.990 is amended to read as follows:

5 (1) Upon proof that any person employed by the ~~[Department of]~~ Labor Cabinet as a  
 6 labor inspector has taken any part in any strike, lockout or similar labor dispute, the  
 7 person~~[he]~~ shall forfeit his or her office.

8 (2) The following civil penalties shall be imposed, in accordance with the provisions in  
 9 KRS 336.985, for violations of the provisions of this chapter:

10 (a) Any person who violates KRS 336.110 shall for each offense be assessed a  
 11 civil penalty of not less than one hundred dollars (\$100) nor more than one  
 12 thousand dollars (\$1,000).

13 (b) Any corporation, association, organization, or person that violates KRS  
 14 336.190 and 336.200 shall be assessed a civil penalty of not less than one  
 15 hundred dollars (\$100) nor more than one thousand dollars (\$1,000) for each  
 16 offense. Each act of violation, and each day during which such an agreement  
 17 remains in effect, shall constitute a separate offense.

18 (c) Any employer who violates the provisions of KRS 336.220 shall be assessed a  
 19 civil penalty of not less than one hundred dollars (\$100) nor more than one  
 20 thousand dollars (\$1,000) for each violation.

21 ➔Section 1727. KRS 337.010 is amended to read as follows:

22 (1) As used in this chapter, unless the context requires otherwise:

23 (a) "Commissioner~~[Executive director]~~" means the commissioner~~[executive~~  
 24 ~~director]~~ of the Department~~[Office]~~ of Workplace Standards under the  
 25 direction and supervision of the secretary~~[commissioner]~~ of the~~[Department~~  
 26 ~~of]~~ Labor Cabinet;

27 (b) "Department~~[Office]~~" means the Department~~[Office]~~ of Workplace

Standards in the ~~Department of~~ Labor Cabinet;

(c) 1. "Wages" includes any compensation due to an employee by reason of his or her employment, including salaries, commissions, vested vacation pay, overtime pay, severance or dismissal pay, earned bonuses, and any other similar advantages agreed upon by the employer and the employee or provided to employees as an established policy. The wages shall be payable in legal tender of the United States or checks on banks convertible into cash on demand at full face value, subject to the allowances made in this chapter;

2. For the purposes of calculating hourly wage rates for scheduled overtime for professional firefighters, as defined in KRS 95A.210(5), "wages" shall not include the distribution to qualified professional firefighters by local governments of supplements received from the Firefighters Foundation Program Fund. For the purposes of calculating hourly wage rates for unscheduled overtime for professional firefighters, as defined in KRS 95A.210(6), "wages" shall include the distribution to qualified professional firefighters by local governments of supplements received from the Firefighters Foundation Program Fund;

(d) "Employer" is any person, either individual, corporation, partnership, agency, or firm who employs an employee and includes any person, either individual, corporation, partnership, agency, or firm acting directly or indirectly in the interest of an employer in relation to an employee; and

(e) "Employee" is any person employed by or suffered or permitted to work for an employer.

(2) As used in KRS 337.275 to 337.325, 337.345, and KRS 337.385 to 337.405, unless the context requires otherwise:

(a) "Employee" is any person employed by or suffered or permitted to work for an

1 employer, but shall not include:

- 2 1. Any individual employed in agriculture;
- 3 2. Any individual employed in a bona fide executive, administrative,
- 4 supervisory, or professional capacity, or in the capacity of outside
- 5 salesman, or as an outside collector as the terms are defined by
- 6 administrative regulations of the commissioner~~[executive director]~~;
- 7 3. Any individual employed by the United States;
- 8 4. Any individual employed in domestic service in or about a private home.

9 The provisions of this section shall include individuals employed in  
10 domestic service in or about the home of an employer where there is  
11 more than one (1) domestic servant regularly employed;

- 12 5. Any individual classified and given a certificate by the
- 13 commissioner~~[executive director]~~ showing a status of learner,
- 14 apprentice, worker with a disability, sheltered workshop employee, and
- 15 student under administrative procedures and administrative regulations
- 16 prescribed and promulgated by the commissioner~~[executive director]~~.
- 17 This certificate shall authorize employment at the wages, less than the
- 18 established fixed minimum fair wage rates, and for the period of time
- 19 fixed by the commissioner~~[executive director]~~ and stated in the
- 20 certificate issued to the person;

- 21 6. Employees of retail stores, service industries, hotels, motels, and
- 22 restaurant operations whose average annual gross volume of sales made
- 23 for business done is less than ninety-five thousand dollars (\$95,000) for
- 24 the five (5) preceding years exclusive of excise taxes at the retail level or
- 25 if the employee is the parent, spouse, child, or other member of his or
- 26 her employer's immediate family;

- 27 7. Any individual employed as a baby-sitter in an employer's home, or an

1 individual employed as a companion by a sick, convalescing, or elderly  
 2 person or by the person's immediate family, to care for that sick,  
 3 convalescing, or elderly person and whose principal duties do not  
 4 include housekeeping;

5 8. Any individual engaged in the delivery of newspapers to the consumer;

6 9. Any individual subject to the provisions of KRS Chapters 7, 16, 27A,  
 7 30A, and 18A provided that the secretary of the Personnel Cabinet shall  
 8 have the authority to prescribe by administrative regulation those  
 9 emergency employees, or others, who shall receive overtime pay rates  
 10 necessary for the efficient operation of government and the protection of  
 11 affected employees;

12 10. Any employee employed by an establishment which is an organized  
 13 nonprofit camp, religious, or nonprofit educational conference center, if  
 14 it does not operate for more than seven (7) months in any calendar year;

15 11. Any employee whose function is to provide twenty-four (24) hour  
 16 residential care on the employer's premises in a parental role to children  
 17 who are primarily dependent, neglected, and abused and who are in the  
 18 care of private, nonprofit childcaring facilities licensed by the Cabinet  
 19 for Health and Family Services under KRS 199.640 to 199.670; or

20 12. Any individual whose function is to provide twenty-four (24) hour  
 21 residential care in his or her own home as a family caregiver and who is  
 22 approved to provide family caregiver services to an adult with a  
 23 disability through a contractual relationship with a community mental  
 24 health-mental retardation board established under KRS 210.370 to  
 25 210.460, or is certified or licensed by the Cabinet for Health and Family  
 26 Services to provide adult foster care.

27 (b) "Agriculture" means farming in all its branches, including cultivation and

1 tillage of the soil; dairying; production, cultivation, growing, and harvesting of  
 2 any agricultural or horticultural commodity; raising of livestock, bees,  
 3 furbearing animals, or poultry; and any practice, including any forestry or  
 4 lumbering operations, performed on a farm in conjunction with farming  
 5 operations, including preparation and delivery of produce to storage, to  
 6 market, or to carriers for transportation to market;

7 (c) "Gratuity" means voluntary monetary contribution received by an employee  
 8 from a guest, patron, or customer for services rendered;

9 (d) "Tipped employee" means any employee engaged in an occupation in which  
 10 he or she customarily and regularly receives more than thirty dollars (\$30) per  
 11 month in tips; and

12 (e) "U.S.C." means the United States Code.

13 (3) As used in KRS 337.505 to 337.550, unless the context requires otherwise:

14 (a) "Construction" includes construction, reconstruction, improvement,  
 15 enlargement, alteration, or repair of any public works project by contract fairly  
 16 estimated to cost more than two hundred fifty thousand dollars (\$250,000). No  
 17 public works project, if procured under a single contract and subject to the  
 18 requirements of this section, may be divided into multiple contracts of lesser  
 19 value to avoid compliance with the provisions of this section;

20 (b) "Contractor" and "subcontractor" include any superintendent, foreman, or  
 21 other authorized agent of any contractor or subcontractor who is in charge of  
 22 the construction of the public works or who is in charge of the employment or  
 23 payment of the employees of the contractor or subcontractor who are  
 24 employed in performing the work to be done or being done by the contractor  
 25 or subcontractor under the particular contract with any public authority;

26 (c) 1. "Locality" shall be determined by the commissioner~~executive director~~.  
 27 The commissioner~~executive director~~ may designate more than one (1)

1 county as a single locality, but if more than one (1) county is designated,  
 2 the multicounty locality shall not extend beyond the boundaries of a  
 3 state Senatorial district. The commissioner~~executive director~~ shall not  
 4 designate less than an entire county as a locality. If there is not available  
 5 in the locality a sufficient number of competent, skilled laborers,  
 6 workmen, and mechanics to efficiently and properly construct the public  
 7 works, "locality" shall include any other locality nearest the one in  
 8 which the work of construction is to be performed and from which such  
 9 available skilled laborers, workmen, and mechanics may be obtained in  
 10 sufficient number to perform the work; and

11 2. "Locality" with respect to contracts advertised or awarded by the  
 12 Transportation Cabinet of this state shall be determined by the secretary  
 13 of the Transportation Cabinet. The secretary may designate any number  
 14 of counties as constituting a single locality. The secretary may also  
 15 designate all counties of the Commonwealth as a single locality, but he  
 16 or she shall not designate less than an entire county as a locality;

17 (d) "Public authority" means any officer, board, or commission of this state, or  
 18 any political subdivision or department thereof in the state, or any institution  
 19 supported in whole or in part by public funds, including publicly owned or  
 20 controlled corporations, authorized by law to enter into any contract for the  
 21 construction of public works and any nonprofit corporation funded to act as an  
 22 agency and instrumentality of the government agency in connection with the  
 23 construction of public works, and any "private provider", as defined in KRS  
 24 197.500, which enters into any contract for the construction of an "adult  
 25 correctional facility", as defined in KRS 197.500; and

26 (e) "Public works" includes all buildings, roads, streets, alleys, sewers, ditches,  
 27 sewage disposal plants, waterworks, and all other structures or work,

1 including "adult correctional facilities", as defined in KRS 197.500,  
 2 constructed under contract with any public authority.

- 3 (4) If the federal government or any of its agencies furnishes by loans or grants any part  
 4 of the funds used in constructing public works, and if the federal government or its  
 5 agencies prescribe predetermined prevailing minimum wages to be paid to  
 6 mechanics, workmen, and laborers employed in the construction of the public  
 7 works, and if KRS 337.505 to 337.550 is also applicable, those wages in each  
 8 classification which are higher shall prevail.

9 ➔Section 1728. KRS 337.075 is amended to read as follows:

- 10 (1) A lien may be placed on all property, both real and personal, of an employer who  
 11 has been assessed civil penalties by the commissioner~~executive director~~ for  
 12 violations of the wages and hours provisions of this chapter, but not before all  
 13 administrative and judicial appeals have been exhausted. The lien shall be in favor  
 14 of the ~~[Department of]~~Labor Cabinet and shall be an amount totaling the unpaid  
 15 wages and penalties due, together with interest at a rate of twelve percent (12%) per  
 16 annum from the date the notice of the violation is final, but not before all  
 17 administrative and judicial appeals have been exhausted. The lien shall be attached  
 18 to all property and rights to property owned or subsequently acquired by the  
 19 employer. The commissioner~~executive director~~ or the commissioner's~~his~~  
 20 designee shall record the lien as provided in subsection (2) of this section. The lien  
 21 shall show the date on which the notice of violation was issued, the date of the  
 22 violation, the name and last known address of the employer against whom the  
 23 assessment was made, and the amount of unpaid wages, penalties, and interest. The  
 24 lien shall be superior to the lien of any mortgage or encumbrance thereafter created  
 25 and shall continue for ten (10) years from the time of the recording, unless sooner  
 26 released or otherwise discharged.

- 27 (2) The lien shall be filed in any of the following offices in which the employer owns



1 property or rights to property and any filing fees associated with filing the lien shall  
2 be pursuant to KRS 64.012:

3 (a) The office of the county clerk of the county in which the defendant employer  
4 resides.

5 (b) The office of the county clerk of the county in which the defendant employer  
6 has its principal place of business.

7 (c) The office of the county clerk of any county in which the defendant employer  
8 has property or an interest in property.

9 ➔Section 1729. KRS 337.200 is amended to read as follows:

10 Except for employers who have been doing business in the state for five (5) consecutive  
11 years, every employer engaged in construction work, or the severance, preparation, or  
12 transportation of minerals, shall furnish on a form prescribed by the  
13 commissioner~~executive director~~ a performance bond to assure the payment of all wages  
14 due from the employer. Surety for the bond shall be an amount of money equal to the  
15 employer's gross payroll operating at full capacity for four (4) weeks. Any employee  
16 whose wages are secured by a bond may obtain payment of those wages, liquidated  
17 damages, and attorney's fees as provided by law on presentation to the  
18 commissioner~~executive director~~ of a final judgment entered by a court of competent  
19 jurisdiction. The bond may be terminated, with the approval of the  
20 commissioner~~executive director~~, on submission of the employer's statement, lawfully  
21 administered under oath, that the employer has ceased doing business in the state and that  
22 all due wages have been paid.

23 ➔Section 1730. KRS 337.295 is amended to read as follows:

24 Regulations issued by the commissioner~~executive director~~ under KRS 337.275 to  
25 337.325, 337.345, and 337.385 to 337.405 may include, but are not limited to, regulations  
26 defining and governing bona fide executive, administrative, or professional employees;  
27 regulations governing learners, apprentices, workers with disabilities, sheltered workshop

1 employees, and students, regulations governing outside salesmen; bonuses; part-time  
 2 rates; special pay for special or extra work; allowances as part of the wage rates  
 3 applicable under KRS 337.275 for board, lodging, and gratuities; other facilities or  
 4 services furnished by employers and used by employees; and other special items usual in  
 5 a particular employer-employee relationship.

6 ➔Section 1731. KRS 337.310 is amended to read as follows:

7 All orders or decisions of the commissioner~~[executive director]~~ issued or made under  
 8 KRS 337.020 to 337.405 may be appealed, and upon appeal an administrative hearing  
 9 shall be conducted in accordance with KRS Chapter 13B.

10 ➔Section 1732. KRS 337.320 is amended to read as follows:

11 (1) Every employer shall keep a record of:

- 12 (a) The amount paid each pay period to each employee;
- 13 (b) The hours worked each day and each week by each employee; and
- 14 (c) Such other information as the commissioner~~[executive director]~~ requires.

15 (2) Such records shall be kept on file for at least one (1) year after entry. They shall be  
 16 open to the inspection and transcript of the commissioner~~[executive director]~~ or the  
 17 commissioner's~~[his]~~ authorized representative at any reasonable time, and every  
 18 employer shall furnish to the commissioner~~[executive director]~~ or the  
 19 commissioner's~~[his]~~ authorized representative on demand a sworn statement of  
 20 them. The commissioner~~[executive director]~~ may require the statement to be upon  
 21 forms prescribed or approved by him or her.

22 ➔Section 1733. KRS 337.340 is amended to read as follows:

23 Every employer shall permit the commissioner~~[executive director]~~ or the  
 24 commissioner's~~[his]~~ authorized agent to question any of his or her employees in the  
 25 place of employment and during work hours in respect to the wages paid to and the hours  
 26 worked by such employee or other employees.

27 ➔Section 1734. KRS 337.345 is amended to read as follows:

1 Except as otherwise provided in this section, the department~~{office}~~ shall not  
 2 disclose the identity of any individual filing a complaint or request for inspection under  
 3 any section of this chapter, except as necessary to enforce, and then only with the specific  
 4 written permission of the complainant.

5 Except as otherwise provided in this section, information secured from inspection  
 6 of the records, or from the transcriptions thereof, or from inspection of the employer's  
 7 premises by the commissioner~~{executive director}~~ or the commissioner's~~{his}~~ authorized  
 8 representatives, shall be held confidential and shall not be disclosed or be open to any  
 9 person except such information may be made available to:

- 10 (1) Officials concerned with, and for the purposes of administration of the laws relating  
 11 to matters under the jurisdiction of the commissioner~~{executive director}~~;
- 12 (2) Any agency of this or any other state, or any federal agency for the purpose of  
 13 enforcing KRS 337.275 to 337.325, 337.345, and 337.385 to 337.405;
- 14 (3) To the Wage and Hour and Public Contracts Division of the United States,  
 15 Department of Labor.

16 ➔Section 1735. KRS 337.385 is amended to read as follows:

- 17 (1) Any employer who pays any employee less than wages and overtime compensation  
 18 to which such employee is entitled under or by virtue of KRS 337.020 to 337.285  
 19 shall be liable to such employee affected for the full amount of such wages and  
 20 overtime compensation, less any amount actually paid to such employee by the  
 21 employer, for an additional equal amount as liquidated damages, and for costs and  
 22 such reasonable attorney's fees as may be allowed by the court. Provided, that if, in  
 23 any action commenced to recover such unpaid wages or liquidated damages, the  
 24 employer shows to the satisfaction of the court that the act or omission giving rise  
 25 to such action was in good faith and that he or she had reasonable grounds for  
 26 believing that his or her act or omission was not a violation of KRS 337.020 to  
 27 337.285, the court may, in its sound discretion, award no liquidated damages, or

award any amount thereof not to exceed the amount specified in this section. Any agreement between such employee and the employer to work for less than the applicable wage rate shall be no defense to such action. Such action may be maintained in any court of competent jurisdiction by any one (1) or more employees for and in behalf of himself, herself, or themselves.

- (2) At the written request of any employee paid less than the amount to which he or she is entitled under the provisions of KRS 337.020 to 337.285, the commissioner~~{executive-director}~~ may take an assignment of such wage claim in trust for the assigning employee and may bring any legal action necessary to collect such claim, and the employer shall be required to pay the costs and such reasonable attorney's fees as may be allowed by the court. The commissioner~~{executive-director}~~ in case of suit shall have power to join various claimants against the same employer in one (1) action.

➔Section 1736. KRS 337.420 is amended to read as follows:

- (1) "Employee" means any individual employed by any employer, including but not limited to individuals employed by the state or any of its political subdivisions, instrumentalities, or instrumentalities of political subdivisions.
- (2) "Employer" means a person who has two (2) or more employees within the state in each of twenty (20) or more calendar weeks in the current or preceding calendar year and an agent of such a person.
- (3) "Wage rate" means all compensation for employment, including payment in kind and amounts paid by employers for employee benefits, as defined by the commissioner~~{executive-director}~~ in regulations issued under KRS 337.420 to 337.433 and 337.990(14).
- (4) "Employ" includes to suffer or permit to work.
- (5) "Occupation" includes any industry, trade, business, or branch thereof, or any employment or class of employment.

1 (6) "Commissioner~~[Executive director]~~" means the commissioner~~[executive director]~~  
 2 of the Department~~[Office]~~ of Workplace Standards under the direction and  
 3 supervision of the secretary~~[commissioner]~~ of the ~~[Department of]~~ Labor Cabinet.

4 (7) "Person" includes one (1) or more individuals, partnerships, corporations, legal  
 5 representatives, trustees, trustees in bankruptcy, or voluntary associations.

6 ➔Section 1737. KRS 337.423 is amended to read as follows:

7 (1) No employer shall discriminate between employees in the same establishment on  
 8 the basis of sex, by paying wages to any employee in any occupation in this state at  
 9 a rate less than the rate at which he or she pays any employee of the opposite sex  
 10 for comparable work on jobs which have comparable requirements relating to skill,  
 11 effort and responsibility. Differentials which are paid pursuant to established  
 12 seniority systems or merit increase systems, which do not discriminate on the basis  
 13 of sex, shall not be included within this prohibition. Nothing in KRS 337.420 to  
 14 337.433 and 337.990(14) shall apply to any employer who is subject to the federal  
 15 Fair Labor Standards Act of 1938, as amended, when that act imposes comparable  
 16 or greater requirements than contained in KRS 337.420 to 337.433 and 337.990(14)  
 17 and when the employer files with the commissioner~~[executive director]~~ of the  
 18 Department~~[Office]~~ of Workplace Standards a statement that the employer is  
 19 covered by the federal Fair Labor Standards Act of 1938, as amended.

20 (2) An employer who is paying a wage differential in violation of KRS 337.420 to  
 21 337.433 and 337.990(14) shall not, in order to comply with it, reduce the wage rates  
 22 of any employee.

23 (3) No person shall cause or attempt to cause an employer to discriminate against any  
 24 employee in violation of KRS 337.420 to 337.433 and 337.990(14).

25 (4) No employer may discharge or discriminate against any employee by reason of any  
 26 action taken by such employee to invoke or assist in any manner the enforcement of  
 27 KRS 337.420 to 337.433 and 337.990(14).

1 ➔Section 1738. KRS 337.425 is amended to read as follows:

- 2 (1) For this purpose, the commissioner~~[executive director]~~, or the commissioner's~~[his]~~  
 3 authorized representative, may enter the place of employment of any employer to  
 4 inspect and copy payrolls and other employment records, to compare character of  
 5 work and operations on which persons employed by him or her are engaged, to  
 6 question such persons, and to obtain other information necessary to the  
 7 administration and enforcement of KRS 337.420 to 337.433 and 337.990(14).
- 8 (2) The commissioner~~[executive director]~~ or the commissioner's~~[his]~~ authorized  
 9 representative may examine witnesses under oath, and require by subpoena the  
 10 attendance and testimony of witnesses and the production of any documentary  
 11 evidence relating to the subject matter of any investigation undertaken pursuant to  
 12 KRS 337.420 to 337.433 and 337.990(14). If a person fails to attend, testify or  
 13 produce documents under or in response to a subpoena, the Circuit Court in the  
 14 judicial circuit where the hearing is being held, on application of the  
 15 commissioner~~[executive director]~~ or the commissioner's~~[his]~~ representative, may  
 16 issue an order requiring the person to appear before the commissioner~~[executive~~  
 17 ~~director]~~ or the commissioner's~~[his]~~ authorized representative, or to produce  
 18 documentary evidence, and any failure to obey the order of the court may be  
 19 punished by the court as contempt.
- 20 (3) The commissioner~~[executive director]~~ may endeavor to eliminate pay practices  
 21 unlawful under KRS 337.420 to 337.433 and 337.990(14) by informal methods of  
 22 conference, conciliation and persuasion, and supervise the payment of wages owing  
 23 to any employee under KRS 337.420 to 337.433 and 337.990(14).
- 24 (4) The commissioner~~[executive director]~~ may issue regulations not inconsistent with  
 25 the purpose of KRS 337.420 to 337.433 and 337.990(14), necessary or appropriate  
 26 to carry out its provisions.

27 ➔Section 1739. KRS 337.427 is amended to read as follows:

- 1 (1) Any employer who violates the provisions of KRS 337.423 shall be liable to the  
2 employee or employees affected in the amount of their unpaid wages, and in  
3 instances of willful violation in employee suits under subsection (2) of this section,  
4 up to an additional equal amount as liquidated damages.
- 5 (2) Action to recover the liability may be maintained in any court of competent  
6 jurisdiction by any one (1) or more employees for and in behalf of himself, herself,  
7 or themselves and other employees similarly situated. The court in the action shall,  
8 in cases of violation in addition to any judgment awarded to the plaintiff or  
9 plaintiffs, allow a reasonable attorney's fee to be paid by the defendant, and costs of  
10 the action.
- 11 (3) An agreement by any employee to work for less than the wage to which the  
12 employee is entitled under KRS 337.420 to 337.433 and 337.990(14) shall not be a  
13 bar to any such action, or to a voluntary wage restitution of the full amount due  
14 under KRS 337.420 to 337.433 and 337.990(14).
- 15 (4) At the written request of any employee claiming to have been paid less than the  
16 wage to which he may be entitled under KRS 337.420 to 337.433 and 337.990(14),  
17 the commissioner~~executive director~~ may bring any legal action necessary in  
18 behalf of the employee to collect the claim for unpaid wages. The  
19 commissioner~~executive director~~ shall not be required to pay the filing fee, or other  
20 costs, in connection with the action. The commissioner~~executive director~~ shall  
21 have power to join various claims against the employer in one (1) cause of action.
- 22 (5) In proceedings under this section, the court may order other affirmative action as  
23 appropriate, including reinstatement of employees discharged in violation of KRS  
24 337.420 to 337.433 and 337.990(14).
- 25 (6) The commissioner~~executive director~~ may on his or her own motion petition any  
26 court of competent jurisdiction to restrain violations of KRS 337.423, and petition  
27 for such affirmative relief as the court may deem appropriate, including restoration

1 of unpaid wages and reinstatement of employees, consistent with the purpose of  
 2 KRS 337.420 to 337.433 and 337.990(14).

3 ➔Section 1740. KRS 337.505 is amended to read as follows:

4 For the purpose of KRS 337.505 to 337.550, the term "prevailing wage" for each  
 5 classification of laborers, workmen, and mechanics engaged in the construction of public  
 6 works within the Commonwealth of Kentucky, means the sum of:

7 (1) The basic hourly rate paid or being paid subsequent to the  
 8 commissioner's~~executive-director's~~ most recent wage determination to the  
 9 majority of laborers, workmen, and mechanics employed in each classification of  
 10 construction upon reasonably comparable construction in the locality where the  
 11 work is to be performed; such rate shall be determined by the  
 12 commissioner~~executive-director~~ in accordance with paragraphs (a), (b), and (c) of  
 13 subsection (3) of KRS 337.520; in the event that there is not a majority paid at the  
 14 same rate, then the basic hourly rate of pay shall be the average basic hourly rate  
 15 which shall be determined by adding the basic hourly rates paid to all workers in the  
 16 classification and dividing by the total number of such workers~~;~~ and

17 (2) An additional amount per hour equal to the hourly rate of contribution irrevocably  
 18 made or to be made by an employer on behalf of employees within each  
 19 classification of construction to a trustee or to a third person pursuant to an  
 20 enforceable commitment to carry out a financially responsible plan or program,  
 21 which was communicated in writing to the employees affected, for the following  
 22 fringe benefits: medical or hospital care, pensions on retirement, death  
 23 compensation for injuries or illness resulting from occupational activity or  
 24 insurance to provide any of the foregoing, unemployment benefits, life insurance,  
 25 disability and sickness insurance, accident insurance, vacation and holiday pay,  
 26 defraying costs of apprenticeship or other similar programs, or other bona fide  
 27 fringe benefits, but only where the employer is not required by other federal, state or



1 local law to provide any of such benefits: provided, said additional amount may, at  
 2 the discretion of the employer, be paid either in cash to the employee or by  
 3 contributions for fringe benefits, or partly in cash and partly by such contributions,  
 4 it being the intention of this subsection to recognize fringe benefits as a part of the  
 5 prevailing wage rate where made in accordance with this subsection.

6 ➔ Section 1741. KRS 337.510 is amended to read as follows:

- 7 (1) Before advertising for bids or entering into any contract for construction of public  
 8 works, every public authority shall notify the department~~{office}~~ in writing of the  
 9 specific public work to be constructed, and shall ascertain from the  
 10 department~~{office}~~ the prevailing rates of wages for each classification of laborers,  
 11 workmen, and mechanics for the class of work called for in the construction of such  
 12 public works in the locality where the work is to be performed. This schedule of the  
 13 prevailing rate of wages shall include a statement that it has been determined in  
 14 accordance with the provisions of KRS 337.505 to 337.550 and shall be attached to  
 15 and made part of the specifications for the work and shall be printed on the bidding  
 16 blanks and made a part of every contract for the construction of public works.
- 17 (2) The public authority advertising and awarding the contract shall cause to be inserted  
 18 in the proposal and contract a stipulation to the effect that not less than the  
 19 prevailing hourly rate of wages as determined by the commissioner~~{executive  
 20 director}~~ shall be paid to all laborers, workmen, and mechanics performing work  
 21 under the contract. It shall also require in all the contractor's bonds that the  
 22 contractor include such provisions as will guarantee the faithful performance of the  
 23 prevailing hourly wage clause as provided by contract. It shall be the duty of the  
 24 public authority awarding the contract, and its agents and officers, to take  
 25 cognizance of all complaints of all violations of the provisions of KRS 337.505 to  
 26 337.550 committed in the course of the execution of the contract, and when making  
 27 payments to the contractor becoming due under the contract, to withhold, and retain

therefrom all sums and amounts due and owing as a result of any violation thereof. It shall be lawful for any contractor to withhold from any subcontractor under him sufficient sums to cover any penalties withheld from him by the awarding authority, on account of the subcontractor's failure to comply with the terms thereof and if payment has already been made to him or her, the contractor may recover from him or her the amount of the penalty in a suit at law.

→Section 1742. KRS 337.512 is amended to read as follows:

(1) No public official, authorized to contract for or construct public works shall fail, before advertising for bids or undertaking such construction, to ascertain from the commissioner~~executive director~~ the prevailing rates of wages as provided in KRS 337.505 to 337.550.

(2) No member of a public authority authorized to contract for or construct public works shall vote for the award of any contract for the construction of such public works, or vote for the disbursement of any funds on account of the construction of such public works, unless such public authority has first ascertained from the commissioner~~executive director~~ the prevailing rates of wages of laborers, workmen, and mechanics for the classes of work called for by such public works in the locality where the work is to be performed and the determination of prevailing wages has been made a part of the proposal specifications and contract for such public works.

→Section 1743. KRS 337.520 is amended to read as follows:

(1) The commissioner~~executive director~~ shall make initial determinations and current revisions of schedules of rates of prevailing wages, of the amount of fringe benefits included as defined in KRS 337.505, and the number of hours applicable. The commissioner~~executive director~~ may promulgate administrative regulations to carry out the provisions and purposes of KRS 337.505 to 337.550 and to prevent their circumvention or evasion. The administrative regulations shall not include a

1 provision that each contractor and subcontractor furnish a sworn affidavit with  
2 respect to the wages paid each employee. No administrative regulation shall be  
3 issued by the commissioner~~[executive director]~~ except upon reasonable notice to,  
4 and opportunity to be heard by, any interested person.

5 (2) The commissioner~~[executive director]~~ shall require the filing of all wage contracts  
6 of all laborers, workmen, and mechanics in this state which have been agreed to  
7 between bona fide organizations of labor and an employer or associations of  
8 employers. The contracts shall be filed within ten (10) days after they are signed.

9 (3) The commissioner~~[executive director]~~ shall have the authority to determine  
10 schedules and current revisions of the rates of prevailing wages as defined in KRS  
11 337.505, but in no case shall the commissioner~~[executive director]~~ determine wages  
12 to be paid for a legal day's work to laborers, workmen, and mechanics engaged in  
13 the construction of public works at less than the prevailing wages paid in the  
14 localities. The commissioner~~[executive director]~~, in determining what rates of  
15 wages prevail, shall consider the following criteria:

16 (a) Wage rates paid on previous public works constructed in the localities. In  
17 considering the rates, the commissioner~~[executive director]~~ shall ascertain,  
18 insofar as practicable, the names and addresses of the contractors, including  
19 subcontractors, the locations, approximate costs, dates of construction and  
20 types of projects, the number of workers employed on each project, and the  
21 respective wage rates paid each worker who was engaged in the construction  
22 of these projects.

23 (b) Wage rates previously paid on reasonably comparable private construction  
24 projects constructed in the localities. In considering the rates the  
25 commissioner~~[executive director]~~ shall ascertain, insofar as practicable, the  
26 names and addresses of the contractors, including subcontractors, the  
27 locations, approximate costs, dates of construction and types of projects, the

1 number of workers employed on each project, and the respective wage rates  
2 paid each worker who was engaged in the construction of these projects.

3 (c) Collective bargaining agreements or understandings between bona fide  
4 organizations of labor and their employers located in the Commonwealth of  
5 Kentucky which agreements apply or pertain to the localities in which the  
6 public works are to be constructed.

7 (4) The wage rates to be used by the public authority in a contract for the construction  
8 of public works shall be the prevailing wage as of the date the public works project  
9 is advertised and offered for bid. If contracts are not awarded within ninety (90)  
10 days after the date of offering for bid, the public authority shall ascertain the  
11 prevailing rate of wages from the department~~[office]~~ before the contract is awarded.  
12 The schedule or scale of prevailing wages shall be incorporated in and made a part  
13 of each contract.

14 (5) The commissioner~~[executive director]~~ may promulgate administrative regulations  
15 authorizing the employment of apprentices and trainees in skilled trades at wages  
16 lower than the applicable prevailing wage.

17 ➔Section 1744. KRS 337.522 is amended to read as follows:

18 (1) The commissioner~~[executive director]~~ or the commissioner's~~[his]~~ authorized  
19 representative shall conduct a public hearing for the purpose of making initial  
20 determinations or current revisions of a prevailing wage schedule for the  
21 construction of public works pertaining to a locality. The commissioner~~[executive  
22 director]~~ shall, within sixty (60) days of the hearing, publish his or her wage  
23 determination. The hearing shall be conducted in the locality after notice has been  
24 given as provided in subsection (3) of this section. The commissioner~~[executive  
25 director]~~ shall not be required to utilize this section in any locality where the United  
26 States Department of Labor has issued a prevailing wage under the Davis-Bacon or  
27 related acts, in which case, the commissioner~~[executive director]~~ may adopt the

1 wage schedule and any modifications issued by the United States Department of  
2 Labor and published in the Federal Register.

3 (2) A public authority or any interested person may request and shall be granted an  
4 additional hearing solely for the purpose of having considered a review of the  
5 commissioner's~~executive director's~~ determination of the prevailing wage schedule  
6 for the construction of public works in the locality; after notice has been given as  
7 provided in subsection (3) of this section, the hearing shall be conducted in the  
8 locality by a prevailing wage review board consisting of one (1) member  
9 representing employers in the construction industry, one (1) member representing  
10 labor in the construction industry, and one (1) member appointed by the public  
11 authority requesting the hearing. The member appointed by the public authority  
12 shall reside in the locality in which the public works are to be constructed. The  
13 members of the board representing employers in the construction industry and labor  
14 in the construction industry shall be appointed for periods of not more than four (4)  
15 years by the Governor from a list of prospective members recommended by bona  
16 fide associations representing the construction industry and bona fide labor  
17 organizations representing workers employed in the construction industry, and the  
18 members shall serve on the board for all hearings during their tenure. Prevailing  
19 wage review boards shall have the authority to revise prevailing wage schedules for  
20 the construction of public works; however, the revisions shall be governed by the  
21 same criteria and regulations governing wage determinations of the  
22 commissioner~~executive director~~. A revision of a prevailing wage schedule for the  
23 construction of public works shall require a vote of a majority of the members. The  
24 members of a prevailing wage review board shall receive their actual necessary  
25 expenses incurred in carrying out their duties and the expenses shall be paid out of  
26 the general fund of the Commonwealth of Kentucky.

27 (3) Notice of hearings as required in subsections (1) and (2) of this section shall be

1 given by advertising one (1) time in the newspaper having the largest circulation in  
 2 the locality, and the advertisement shall be run not less than ten (10) nor more than  
 3 twenty (20) days prior to the date of the hearing. The advertisement shall set forth  
 4 all pertinent information of the hearing regarding the time, place, and purpose of the  
 5 hearing.

6 (4) The prevailing wage review boards shall be attached to the ~~[Department of]~~Labor  
 7 Cabinet for administrative purposes.

8 ➔Section 1745. KRS 337.524 is amended to read as follows:

9 If a review of the commissioner's~~[executive director's]~~ determination is requested  
 10 pursuant to subsection (2) of KRS 337.522, the wage rates to be used by the public  
 11 authority in a contract for the construction of public works advertised during the  
 12 pendency of the proceedings provided in subsection (2) of KRS 337.522, or on appeal  
 13 pursuant to KRS 337.525, shall be the latest rate determined by the  
 14 commissioner~~[executive director]~~ and which is being reviewed. The public authority  
 15 shall place in its advertisement, bid documents and contracts, a statement to the effect that  
 16 the prevailing wage rates contained therein are presently being reviewed and subject to  
 17 change by appropriate reviewing authorities, and if said rates are modified or altered, the  
 18 contractors shall be responsible for the payment of the wage rates finally determined.  
 19 Should any rates be increased from that determined by the commissioner~~[executive~~  
 20 ~~director]~~, the contractor may recover from the public authority any additional sums of  
 21 money which he or she may be required to pay as a result of said wage modification or  
 22 alteration. Should any rates be decreased from that determined by the  
 23 commissioner~~[executive director]~~, the public authority shall be barred from any recovery  
 24 of the difference previously earned by or paid to employees.

25 ➔Section 1746. KRS 337.525 is amended to read as follows:

26 (1) Any person or party claiming to be aggrieved by any final determination of  
 27 prevailing wages by the prevailing wage review board may appeal to the Franklin

1 Circuit Court. The appeal shall state fully the grounds upon which an appeal is  
 2 sought and assign all errors relied upon. A copy of the appeal and summons shall be  
 3 served upon the Department~~{Office}~~ of Workplace Standards and the members of  
 4 the prevailing wage review board and within thirty (30) days after such service, or  
 5 within such further time as the court may allow, the department~~{office}~~ on behalf of  
 6 the prevailing wage review board shall submit to the court a certified copy of all  
 7 matters considered by the prevailing wage review board from which it made its final  
 8 wage determination.

9 (2) No new or additional evidence may be introduced in the Franklin Circuit Court  
 10 except as to the fraud or misconduct of some person engaged in the administration  
 11 of this chapter and affecting the order, ruling or award. The court shall otherwise  
 12 hear the appeal upon the record as certified by the Department~~{Office}~~ of  
 13 Workplace Standards and shall dispose of same in summary manner. The court  
 14 shall not substitute its judgment for that of the prevailing wage review board, the  
 15 court's review being limited to determining whether or not:

- 16 (a) The prevailing wage review board acted without or in excess of its powers;
- 17 (b) The prevailing wage review board's final wage determination was procured by  
 18 fraud;
- 19 (c) The determination is not in conformity with the provisions of this chapter;
- 20 (d) The determination is clearly erroneous on the basis of the information  
 21 contained in the record; or
- 22 (e) The final wage determination is arbitrary or capricious.

23 (3) The Franklin Circuit Court thereafter shall enter an order affirming or setting aside  
 24 the prevailing wage review board's wage determination. The court may also remand  
 25 the case to the prevailing wage review board for further proceedings.

26 (4) An appeal may be taken to the Court of Appeals from any decision of the Franklin  
 27 Circuit Court under this section.

1        ➔Section 1747. KRS 337.530 is amended to read as follows:

- 2        (1) Where a prevailing rate of wages has been determined and prescribed, the contract  
3        executed between a public authority and the successful bidder or contractor shall  
4        contain a provision requiring the successful bidder and all of his or her  
5        subcontractors to pay not less than the rate of wages so established. The successful  
6        bidder or contractor and all subcontractors shall strictly comply with these  
7        provisions of the contract.
- 8        (2) All contractors and subcontractors required by KRS 337.505 to 337.550 and by  
9        contracts with any public authority to pay not less than the prevailing rate of wages,  
10       shall pay such wages in legal tender without any deductions. These provisions shall  
11       not apply where the employer and employee enter into an agreement in writing at  
12       the beginning of or during any term of employment covering deductions for food,  
13       sleeping accommodations or any similar item if this agreement is submitted by the  
14       employer to the department~~[office]~~ and is approved by the department~~[office]~~ as  
15       fair and reasonable. All contractors and subcontractors affected by the terms of KRS  
16       337.505 to 337.550 shall keep full and accurate payroll records covering all  
17       disbursements of wages to their employees to whom they are required to pay not  
18       less than the prevailing rate of wages. Such records shall indicate the hours worked  
19       each day by each employee in each classification of work and the amount paid each  
20       employee for his or her work in each classification. They shall be open to the  
21       inspection and transcript of the commissioner~~[executive director]~~ or the  
22       commissioner's~~[his]~~ authorized representative at any reasonable time, and shall be  
23       in compliance with all regulations issued by the commissioner~~[executive director]~~.  
24       These payroll records shall not be destroyed or removed from this state for one (1)  
25       year following the completion of the improvement in connection with which they  
26       are made.
- 27       (3) Each contractor and subcontractor subject to the provisions of KRS 337.505 to



337.550 shall post and keep posted in a conspicuous place or places at the site of the construction work a copy or copies of prevailing rates of wages and working hours as prescribed in the contract with the public authority, showing the rates of wages prescribed and the working hours for each class of laborers, workmen, and mechanics employed by him or her in the work of constructing the public works provided for in the contract with the public authority.

(4) Every employer shall permit the commissioner~~[executive director]~~ or the commissioner's~~[his]~~ authorized agents to question any of his or her employees at the site of the public work and during work hours in respect to the wages paid, hours worked and duties of such employee or other employees.

➔Section 1748. KRS 337.548 is amended to read as follows:

If it is found that a public authority has not complied with KRS 337.505 to 337.550, the commissioner~~[executive director]~~ shall give notice thereof in writing to such public authority. Sufficient time may be allowed for compliance therewith as the commissioner~~[executive director]~~ deems necessary. After the expiration of the time prescribed in the notice, the department~~[office]~~ shall at the earliest possible time bring suit in the Circuit Court of the county in which such public body is located to enjoin the award of such contract for a public works or any further work or payments thereunder if the contract has been awarded until the requirements of such notice are complied with. The court may issue a temporary restraining order without notice to the defendant in such action. Upon final hearing thereof, if the court is satisfied that the requirements of the notice by the department~~[office]~~ to the defendant were not unreasonable or arbitrary, it shall issue an order enjoining the defendant from awarding such contract for a public works or any further work or payments thereunder if the contract has been awarded until the notice is complied with. Such injunction shall continue operative until the court is satisfied that the requirements of the notice have been complied with and the court shall have and exercise with respect to the enforcement of such injunctions all the power

1 invested in it in other similar cases. Both the plaintiff and the defendant in such action  
 2 have the same rights of appeal as are provided by law in other injunction actions.

3 ➔Section 1749. KRS 337.550 is amended to read as follows:

4 (1) Any laborer, workman, or mechanic employed on public works may file a  
 5 complaint of any violation of any provision of KRS 337.505 to 337.550 with the  
 6 ~~department~~~~office~~. The ~~department~~~~office~~ shall assist him or her in the collection  
 7 of claims of wages due him or her and shall also assist to the fullest extent in the  
 8 administration and enforcement of KRS 337.505 to 337.550. The  
 9 ~~commissioner~~~~executive director~~ shall investigate and enforce the provisions of  
 10 KRS 337.505 to 337.550 to the fullest and shall bring all actions to collect wages  
 11 due any laborer, workman, or mechanic and shall take action against any contractor  
 12 or subcontractor to restrain violations of KRS 337.505 to 337.550. If any contractor  
 13 or subcontractor is found to be in violation of any provisions of KRS 337.505 to  
 14 337.550, then the ~~commissioner~~~~executive director~~ shall inform the secretary for  
 15 finance and administration of the Commonwealth of Kentucky, and the secretary for  
 16 finance and administration shall hold such contractor or subcontractor ineligible to  
 17 bid on public works until such time as that contractor or subcontractor is in  
 18 substantial compliance as determined by the ~~commissioner~~~~executive director~~.

19 (2) A laborer, workman, or mechanic may by civil action recover any sum due him or  
 20 her as the result of the failure of his or her employer to comply with the terms of  
 21 KRS 337.505 to 337.550. The ~~commissioner~~~~executive director~~ may also bring any  
 22 legal action necessary to collect claims on behalf of any or all laborers, workmen, or  
 23 mechanics. No employer shall take any punitive measure or action against an  
 24 employee because such employee has made a charge, testified, assisted or  
 25 participated in any manner in an investigation, proceeding or hearing under KRS  
 26 337.505 to 337.550. The ~~commissioner~~~~executive director~~ shall not be required to  
 27 pay the filing fee, or other costs, in connection with such action.

1        ➔Section 1750. KRS 337.990 is amended to read as follows:

2        The following civil penalties shall be imposed, in accordance with the provisions in KRS  
3        336.985, for violations of the provisions of this chapter:

- 4        (1) Any firm, individual, partnership, or corporation that violates KRS 337.020 shall be  
5        assessed a civil penalty of not less than one hundred dollars (\$100) nor more than  
6        one thousand dollars (\$1,000) for each offense. Each failure to pay an employee the  
7        wages when due him under KRS 337.020 shall constitute a separate offense.
- 8        (2) Any employer who violates KRS 337.050 shall be assessed a civil penalty of not  
9        less than one hundred dollars (\$100) nor more than one thousand dollars (\$1,000).
- 10       (3) Any employer who violates KRS 337.055 shall be assessed a civil penalty of not  
11       less than one hundred dollars (\$100) nor more than one thousand dollars (\$1,000)  
12       for each offense and shall make full payment to the employee by reason of the  
13       violation. Each failure to pay an employee the wages as required by KRS 337.055  
14       shall constitute a separate offense.
- 15       (4) Any employer who violates KRS 337.060 shall be assessed a civil penalty of not  
16       less than one hundred dollars (\$100) nor more than one thousand dollars (\$1,000)  
17       and shall also be liable to the affected employee for the amount withheld, plus  
18       interest at the rate of ten percent (10%) per annum.
- 19       (5) Any employer who violates the provisions of KRS 337.065 shall be assessed a civil  
20       penalty of not less than one hundred dollars (\$100) nor more than one thousand  
21       dollars (\$1,000) for each offense and shall make full payment to the employee by  
22       reason of the violation.
- 23       (6) Any person who fails to comply with KRS 337.070 shall be assessed a civil penalty  
24       of not less than one hundred dollars (\$100) nor more than one thousand dollars  
25       (\$1,000) for each offense and each day that the failure continues shall be deemed a  
26       separate offense.
- 27       (7) Any employer who violates any provision of KRS 337.275 to 337.325, KRS

1 337.345, and KRS 337.385 to 337.405, or willfully hinders or delays the  
 2 commissioner~~[executive—director]~~ or the commissioner's~~[his]~~ authorized  
 3 representative in the performance of his or her duties under KRS 337.295, or fails  
 4 to keep and preserve any records as required under KRS 337.320 and 337.325, or  
 5 falsifies any record, or refuses to make any record or transcription thereof accessible  
 6 to the commissioner~~[executive—director]~~ or the commissioner's~~[his]~~ authorized  
 7 representative shall be assessed a civil penalty of not less than one hundred dollars  
 8 (\$100) nor more than one thousand dollars (\$1,000). A civil penalty of not less than  
 9 one thousand dollars (\$1,000) shall be assessed for any subsequent violation of  
 10 KRS 337.285(4) to (9) and each day the employer violates KRS 337.285(4) to (9)  
 11 shall constitute a separate offense and penalty.

12 (8) Any employer who pays or agrees to pay wages at a rate less than the rate applicable  
 13 under KRS 337.275 and 337.285, or any wage order issued pursuant thereto shall be  
 14 assessed a civil penalty of not less than one hundred dollars (\$100) nor more than  
 15 one thousand dollars (\$1,000).

16 (9) Any employer who discharges or in any other manner discriminates against any  
 17 employee because the employee has made any complaint to his or her employer, to  
 18 the commissioner~~[executive—director]~~, or to the commissioner's~~[his]~~ authorized  
 19 representative that he or she has not been paid wages in accordance with KRS  
 20 337.275 and 337.285 or regulations issued thereunder, or because the employee has  
 21 caused to be instituted or is about to cause to be instituted any proceeding under or  
 22 related to KRS 337.385, or because the employee has testified or is about to testify  
 23 in any such proceeding, shall be deemed in violation of KRS 337.275 to 337.325,  
 24 KRS 337.345, and KRS 337.385 to 337.405 and shall be assessed a civil penalty of  
 25 not less than one hundred dollars (\$100) nor more than one thousand dollars  
 26 (\$1,000).

27 (10) Any employer who violates KRS 337.365 shall be assessed a civil penalty of not

- 1 less than one hundred dollars (\$100) nor more than one thousand dollars (\$1,000).
- 2 (11) Any person who violates KRS 337.530 shall be assessed a civil penalty of not less  
3 than one hundred dollars (\$100) nor more than one thousand dollars (\$1,000).
- 4 (12) Any contractor or subcontractor who violates any wage or work hours provision in  
5 any contract under KRS 337.505 to 337.550 shall be assessed a civil penalty of not  
6 less than one hundred dollars (\$100) nor more than one thousand dollars (\$1,000)  
7 for each offense, and the contractor or subcontractor shall make full restitution to all  
8 employees to whom he or she is legally indebted by reason of said violation. The  
9 prime contractor shall be jointly and severally liable with a subcontractor for wages  
10 due an employee of the subcontractor. For a flagrant or repeated violation the  
11 offending contractor or subcontractor shall be barred from bidding on, or working  
12 on, any and all public works contracts, either in his or her name or in the name of  
13 any other company, firm, or other entity in which he or she might be interested for a  
14 period of two (2) years from the date of the last offense. Each day of violation shall  
15 constitute a separate offense, and the violation as affects each individual worker  
16 shall constitute a separate offense.
- 17 (13) Any public authority, public official, or member of a public authority who willfully  
18 fails to comply or to require compliance with KRS 337.505 to 337.550 shall be  
19 assessed a civil penalty of not less than one hundred dollars (\$100) nor more than  
20 one thousand dollars (\$1,000) for each offense. Each day of violation shall  
21 constitute a separate offense. If a public authority, public official or member of a  
22 public authority willfully or negligently fails to comply with KRS 337.505 to  
23 337.550 and the failure results in damages, injury or loss to any person, the public  
24 authority, public official, or member of a public authority may be held liable in a  
25 civil action.
- 26 (14) A person shall be assessed a civil penalty of not less than one hundred dollars  
27 (\$100) nor more than one thousand dollars (\$1,000) when that person discharges or

1 in any other manner discriminates against an employee because the employee has:

- 2 (a) Made any complaint to his or her employer, the commissioner~~executive~~  
3 ~~director~~, or any other person; or
- 4 (b) Instituted, or caused to be instituted, any proceeding under or related to KRS  
5 337.420 to 337.433; or
- 6 (c) Testified, or is about to testify, in any such proceedings.

7 ➔Section 1751. KRS 338.015 is amended to read as follows:

8 As used in this chapter:

- 9 (1) "Employer" shall mean any entity for whom a person is employed except those  
10 employers excluded in KRS 338.021.
- 11 (2) "Employee" shall mean any person employed except those employees excluded in  
12 KRS 338.021.
- 13 (3) The term "occupational safety and health standard" means a standard which requires  
14 conditions, or the adoption or use of one (1) or more practices, means, methods,  
15 operations, or processes, reasonably necessary or appropriate to provide safe or  
16 healthful employment and places of employment. "Standard" has the same meaning  
17 as and includes the words "regulation" and "rule."
- 18 (4) "Occupational safety and health hazard" means any practice or condition in a place  
19 of employment which may be deemed detrimental to the safety and health of  
20 employees.
- 21 (5) "Occupational injury or illness" means any abnormal condition or disorder of an  
22 employee caused by exposure to factors associated with his or her employment.
- 23 (6) "Board" means the Kentucky Occupational Safety and Health Standards Board  
24 established under this chapter.
- 25 (7) "Commissioner~~Executive director~~" means the commissioner~~executive director~~  
26 of the Department~~Office~~ of Workplace Standards~~Occupational Safety and~~  
27 ~~Health~~ under the direction and supervision of the secretary~~commissioner~~ of the

1       ~~[Department of]~~Labor Cabinet.

2       (8) "Review commission" means the Kentucky Occupational Safety and Health Review  
3       Commission established under this chapter.

4       (9) The term "national consensus standard" means any occupational safety and health  
5       standard or modification thereof which has been adopted and promulgated by a  
6       nationally recognized standards-producing organization.

7       (10) The term "established federal standard" means any operative occupational safety  
8       and health standard established by any agency of the United States government.

9       (11) "~~Department~~~~[Office]~~" means the Department~~[Office]~~ of Workplace  
10       Standards~~[Occupational Safety and Health]~~.

11       (12) "~~Secretary~~~~[Commissioner]~~" means the secretary~~[commissioner]~~ of the ~~[Department~~  
12       ~~of]~~Labor Cabinet.

13       ➔Section 1752. KRS 338.041 is amended to read as follows:

14       (1) ~~[There is hereby created in]~~The Department of Workplace Standards in the Labor  
15       Cabinet~~[an Office of Occupational Safety and Health. This office shall consist of a~~  
16       ~~Division of Compliance and a Division of Education and Training. This office]~~  
17       shall administer all matters pertaining to occupational safety and occupational  
18       health~~[and shall be under the supervision of an executive director appointed by the~~  
19       ~~secretary of the Environmental and Public Protection Cabinet with the approval of~~  
20       ~~the Governor]~~.

21       (2) The department~~[office]~~ may require the assistance of other state agencies and may  
22       enter into agreements with other state agencies and political subdivisions of the  
23       Commonwealth for the administration of this chapter.

24       (3) The department~~[office]~~ may enter into an agreement with the Cabinet for Health  
25       and Family Services and other appropriate departments or agencies to conduct  
26       research, experiments, and demonstrations relating to occupational safety and  
27       health, including studies of psychological factors involved, and relating to

1 innovative methods, techniques, and approaches for dealing with occupational  
2 safety and health problems in the administration of this chapter.

3 ➔Section 1753. KRS 338.042 is amended to read as follows:

4 Effective July 1, 1994, the Department~~[Kentucky Office]~~ of Workplace  
5 Standards~~[Occupational Safety and Health]~~ shall be expanded by sixteen (16) employees.  
6 These additional staff shall assist employers in their efforts to improve safety and health  
7 practices in their workplaces; to assure compliance with industrial health and safety  
8 regulations; and to expedite the processing of contested citations and appeals. These  
9 additional expenditures shall be financed by funds collected for the special fund pursuant  
10 to KRS 342.122.

11 ➔Section 1754. KRS 338.051 is amended to read as follows:

12 (1) There is hereby established the Kentucky Occupational Safety and Health Standards  
13 Board consisting of the secretary~~[commissioner]~~ and twelve (12) members equally  
14 representing industry, labor, agriculture, and the safety and health profession. The  
15 members shall be appointed by the Governor for terms of three (3) years and until  
16 their successors are appointed and qualified, from lists of nominees submitted by  
17 bona fide associations representative of industry, labor, agriculture, and the safety  
18 and health profession. Members shall receive twenty-five dollars (\$25) per day for  
19 attending each meeting and shall be reimbursed for actual expenses incurred in  
20 carrying out their duties. The secretary~~[commissioner]~~ shall act as chairman of the  
21 board. No member of the board may have a concurrent term on the review  
22 commission.

23 (2) The board shall hold annual meetings and additional meetings as needed. A  
24 majority of the board constitutes a quorum for the transaction of business.

25 (3) The board shall adopt and promulgate occupational safety and health rules,  
26 regulations, and standards, except that the chairman of the board may adopt  
27 established federal standards without board approval if necessary to meet federal



1 time requirements. The board shall secure all expertise, testimony, and evidence  
2 necessary to accomplish the purposes of this chapter.

- 3 (4) The board shall be attached to the ~~{Department of}~~Labor Cabinet for administrative  
4 purposes.

5 ➔Section 1755. KRS 338.071 is amended to read as follows:

- 6 (1) There is hereby established the Kentucky Occupational Safety and Health Review  
7 Commission consisting of three (3) members appointed by the Governor on the  
8 basis of their experience and competence in the fields of occupational safety and  
9 health. The members selected shall be qualified to represent the interest of  
10 employers, employees, and the occupational safety and health profession with a  
11 minimum of five (5) years experience in their respective fields.

- 12 (2) Members of the review commission shall serve terms of four (4) years and until  
13 their successors are appointed.

- 14 (3) The review commission shall hold monthly meetings and additional meetings as  
15 deemed necessary. A majority of the review commission constitutes a quorum for  
16 the transaction of business. Special meetings of the review commission may be  
17 called upon reasonable notice by the commissioner or by any two (2) members of  
18 the commission.

- 19 (4) The review commission shall hear and rule on appeals from citations, notifications,  
20 and variances issued under the provisions of this chapter and adopt and promulgate  
21 rules and regulations with respect to the procedural aspect of its hearings.

- 22 (5) The review commission shall have the authority to employ a secretary, hearing  
23 officers, and other employees as may become necessary.

- 24 (6) The chairman of the commission and each of the other two (2) members shall be  
25 paid a salary fixed under KRS 64.640.

- 26 (7) The secretary of the commission shall be paid a salary to be fixed by the  
27 commission, with the approval of the Governor. The commission shall fix the

1 compensation of all its other employees.

2 (8) The commissioners and the secretary and employees of the commission are entitled  
3 to all necessary expenses incurred in traveling on business of the commission.

4 (9) The commission shall be attached to the Labor~~[Environmental and Public~~  
5 ~~Protection]~~ Cabinet~~[, Office of the Secretary,]~~ for administrative purposes only.

6 ➔Section 1756. KRS 338.101 is amended to read as follows:

7 (1) In order to carry out the purposes of this chapter, the commissioner~~[executive~~  
8 ~~director,]~~ or the commissioner's~~[his]~~ authorized representative shall have the  
9 authority:

10 (a) To enter without delay and advance notice any place of employment during  
11 regular working hours and at other reasonable times in order to inspect such  
12 places, question privately any such employer, owner, operator, agent,  
13 employee, or employee's representative, and investigate such facts, conditions,  
14 practices, or matters deemed appropriate to determine the cause of, or to  
15 prevent the occurrence of, any occupational injury or illness.

16 (b) To administer oaths, take depositions, conduct hearings, take photographs,  
17 review any and all accident and illness records, and secure any other evidence  
18 deemed necessary to evaluate any occupational safety and health hazard in  
19 order to ascertain whether any person has violated any provision of this  
20 chapter or regulations issued pursuant thereto.

21 (2) If an employer refuses such entry, then the commissioner~~[executive director]~~ may  
22 apply to the Franklin Circuit Court for an order to enforce the right of entry.

23 ➔Section 1757. KRS 338.111 is amended to read as follows:

24 A representative of the employer and a representative authorized by the employees shall  
25 be given an opportunity to accompany the representative of the commissioner~~[executive~~  
26 ~~director]~~ during the physical inspection of any place of employment as authorized by  
27 KRS 338.101. If there is no authorized employee representative available at the time of

1 inspection, the commissioner's~~[executive director's]~~ representative shall consult with a  
 2 reasonable number of employees concerning matters of occupational safety and health in  
 3 the place of employment. The representative of the commissioner~~[executive director]~~  
 4 shall be in full charge of the inspection, including the right to limit the number of  
 5 representatives on the inspection team.

6 ➔Section 1758. KRS 338.121 is amended to read as follows:

7 (1) Any employee, or representative of employees, who believes that a violation of an  
 8 occupational safety and health standard exists that threatens physical harm, or that  
 9 an imminent danger exists, may request an inspection by giving notice to the  
 10 commissioner~~[executive director]~~ of such violation or danger. Any such notice shall  
 11 be reduced to writing, shall set forth with reasonable particularity the grounds for  
 12 the notice, and shall be signed by the employees or representative of employees, and  
 13 a copy shall be provided the employer or the employer's~~[his]~~ agent no later than at  
 14 the time of inspection, except that, upon the request of the person giving such  
 15 notice, his or her name and the names of individual employees referred to therein  
 16 shall not appear in such copy.

17 (2) If upon receipt of notification, reasonable grounds are believed to exist for such  
 18 violation or danger, then a special inspection shall be made in accordance with the  
 19 provisions of KRS 338.101 and 338.111. If no reasonable grounds are believed to  
 20 exist for such violation of danger, then the commissioner~~[executive director]~~ shall  
 21 notify the employee or the representative of the employees in writing of such  
 22 determination.

23 (3) (a) No person shall discharge or in any manner discriminate against any employee  
 24 because such employee has filed any complaint or instituted or caused to be  
 25 instituted any proceeding under or related to this chapter or has testified or is  
 26 about to testify in any such proceeding or because of the exercise by such  
 27 employee on behalf of himself or herself or others of any right afforded by

1 this chapter; and

2 (b) Any employee who believes that he or she has been discharged or otherwise  
 3 discriminated against by any person in violation of this subsection may, within  
 4 a reasonable time after such violation occurs, file a complaint with the  
 5 commissioner~~[executive director]~~ alleging such discrimination. Upon receipt  
 6 of such complaint, the commissioner~~[executive director]~~ shall cause such  
 7 investigation to be made as deemed appropriate. If upon such investigation,  
 8 the commissioner~~[executive director]~~ determines that the provisions of this  
 9 subsection have been violated, he or she shall issue a citation to the employer  
 10 which may be challenged or contested in accordance with the provisions of  
 11 this chapter and the review commission may order all appropriate relief  
 12 including rehiring and reinstatement of the employee to his or her former  
 13 position with back pay. Upon an initial determination by the  
 14 commissioner~~[executive director]~~ that an employee has been discharged by an  
 15 employer in violation of subsection (3)(a) of this section, the  
 16 secretary~~[commissioner]~~ of the ~~[Department of]~~Labor Cabinet may order  
 17 reinstatement of the employee pending a final determination and order of the  
 18 review commission.

19 ➔Section 1759. KRS 338.131 is amended to read as follows:

20 (1) Whenever an authorized representative of the commissioner~~[executive director]~~  
 21 determines that conditions in any place of employment are of an imminent danger  
 22 which reasonably could be expected to cause death or serious physical harm, then  
 23 he or she shall order the danger to be immediately abated. Any order issued under  
 24 this section may require such steps to be taken as may be necessary to avoid,  
 25 correct, or remove such imminent danger and prohibit the employment or presence  
 26 of any individual in locations or under conditions where such imminent danger  
 27 exists, except individuals whose presence is necessary to avoid, correct, or remove

1 such imminent danger or to maintain the capacity of a continuous process operation  
 2 to resume normal operations without a complete cessation of operations, or where a  
 3 cessation of operations is necessary, to permit such to be accomplished in a safe and  
 4 orderly manner.

- 5 (2) In the event the danger is not abated immediately, the commissioner~~executive~~  
 6 ~~director~~ shall apply to the Franklin Circuit Court for an order to restrain such  
 7 condition or practice.

8 ➔Section 1760. KRS 338.133 is amended to read as follows:

- 9 (1) If in the discretion of the commissioner~~executive director~~ it is believed that a  
 10 place of employment, equipment, or practice is substantially dangerous to  
 11 employees, or other persons, then the commissioner~~executive director~~ may apply  
 12 to the Circuit Court in the county wherein the condition is located for a temporary  
 13 injunction restraining the operation or segment of operation.

- 14 (2) The Circuit Court shall hear the application for the temporary injunction as soon as  
 15 possible, irrespective of the regular court calendar.

- 16 (3) The commissioner~~executive director~~ shall not be required to post any bond or pay  
 17 any court costs or fees with the filing of the application.

18 ➔Section 1761. KRS 338.141 is amended to read as follows:

- 19 (1) If upon inspection an authorized representative of the commissioner~~executive~~  
 20 ~~director~~ finds that an employer has violated any requirement of this chapter, a  
 21 citation shall be issued to the employer. Each citation shall describe the alleged  
 22 violation, establish the time period permitted for correction by fixing a reasonable  
 23 date by which the alleged violation shall be eliminated, and propose the civil  
 24 penalty to be paid. If within fifteen (15) working days from the receipt of the  
 25 citation an employer, employee, or representative of the employees fails to notify  
 26 the commissioner~~executive director~~ that he or she intends to contest the citation,  
 27 then the citation shall be deemed a final order of the review commission and not be

1 subject to review by any court or agency.

2 (2) The commissioner~~[executive director]~~, upon determination that an employer is  
3 acting in good faith to correct the cited violation, may grant additional time for  
4 compliance upon application by the employer.

5 (3) If an employer, employee, or representative of the employees notifies the  
6 commissioner~~[executive director]~~ that he or she intends to challenge a citation  
7 issued under this section or under KRS 338.131, the commissioner~~[executive~~  
8 ~~director]~~ shall notify the review commission of such notification and the review  
9 commission shall afford an opportunity for a hearing.

10 (4) In the case of any review proceedings initiated by an employer, employee, or  
11 representative of the employees under this chapter, the time period permitted for  
12 correction of cited violations may be extended by the review commission.

13 ➔Section 1762. KRS 338.153 is amended to read as follows:

14 (1) Any affected employer may apply to the commissioner~~[executive director]~~ for a  
15 rule or order for a variance from a standard promulgated under this chapter.  
16 Affected employees shall be given notice of each such application and an  
17 opportunity to participate in a hearing. The commissioner~~[executive director]~~ shall  
18 issue such rule or order if he or she determines on the record, after opportunity for  
19 an inspection where appropriate and a hearing, that the proponent of the variance  
20 has demonstrated by a preponderance of the evidence that the conditions, practices,  
21 means, methods, operations, or processes used or proposed to be used by an  
22 employer will provide employment and places of employment to his or her  
23 employees which are as safe and healthful as those which would prevail if he or she  
24 complied with the standard. The rule or order so issued shall prescribe the  
25 conditions the employer must maintain, and the practices, means, methods,  
26 operations, and processes which he or she must adopt and utilize to the extent they  
27 differ from the standard in question. Such a rule or order may be modified or

1       revoked upon application by an employer, employees, or by the  
 2       commissioner~~[executive-director]~~ of his or her own motion, in the manner  
 3       prescribed for its issuance under this subsection at any time after six (6) months  
 4       from its issuance.

- 5       (2) (a) Any employer may apply to the commissioner~~[executive-director]~~ for a  
 6       temporary order granting a variance from a standard or any provision thereof  
 7       promulgated under this section. Such temporary order shall be granted only if  
 8       the employer files an application which meets the requirements of paragraph  
 9       (b) of this subsection and establishes that:

- 10       1. He or she is unable to comply with the standard by its effective date  
 11       because of unavailability of professional or technical personnel or of  
 12       materials and equipment needed to come into compliance with the  
 13       standard or because necessary construction or alteration of facilities  
 14       cannot be completed by the effective date;
- 15       2. He or she is taking all available steps to safeguard his or her employees  
 16       against the hazards covered by the standard; and
- 17       3. He or she has an effective program for coming into compliance with the  
 18       standard as quickly as practicable.

19       Any temporary order issued under this subsection shall prescribe the practices,  
 20       means, methods, operations, and processes which the employer must adopt  
 21       and use while the order is in effect and state in detail his or her program for  
 22       coming into compliance with the standard. Such a temporary order may be  
 23       granted only after notice to employees and an opportunity for a hearing;  
 24       provided, that the commissioner~~[executive-director]~~ may issue one (1) interim  
 25       order to be effective until a decision is made on the basis of the hearing. No  
 26       temporary order may be in effect for longer than the period needed by the  
 27       employer to achieve compliance with the standard or one (1) year, whichever

1 is shorter, except that such an order may be renewed not more than twice:

- 2 1. So long as the requirements of this subsection are met; and
- 3 2. If an application for renewal is filed at least ninety (90) days prior to the
- 4 expiration date of the order. No interim renewal of an order may remain
- 5 in effect for longer than one hundred eighty (180) days.

6 (b) An application for a temporary order under this subsection shall contain:

- 7 1. A specification of the standard or portion thereof from which the
- 8 employer seeks a variance;[.]
- 9 2. A representation by the employer, supported by representations from
- 10 qualified persons having firsthand knowledge of the facts represented,
- 11 that he or she is unable to comply with the standard or portion thereof
- 12 and a detailed statement of the reasons therefor;[.]
- 13 3. A statement of the steps he or she has taken and will take (with specific
- 14 dates) to protect employees against the hazard covered by the
- 15 standard;[.]
- 16 4. A statement of when he or she expects to be able to comply with the
- 17 standard and what steps or she he has taken and what steps he or she
- 18 will take (with dates specified) to come into compliance with the
- 19 standard;[.] and
- 20 5. A certification that he or she has informed his or her employees of the
- 21 application by giving a copy thereof to their authorized representative,
- 22 posting a statement giving a summary of the application and specifying
- 23 where a copy may be examined at the place or places where notices to
- 24 employees are normally posted, and by other appropriate means. A
- 25 description of how employees have been informed shall be contained in
- 26 the certification. The information to employees shall also inform them of
- 27 their right to petition the commissioner[~~executive director~~] for a



1 hearing.

2 (c) The commissioner~~[executive director]~~ is authorized to grant a variance from  
3 any standard or portion thereof whenever he or she determines that such  
4 variance is necessary to permit an employer to participate in an experiment  
5 approved by him or her designed to demonstrate or validate new and  
6 improved techniques to safeguard the health or safety of workers.

7 ➔Section 1763. KRS 338.161 is amended to read as follows:

8 (1) The Department~~[Office]~~ of Workplace Standards~~[Occupational Safety and Health]~~  
9 shall develop and maintain a program of collection, compilation, and analysis of  
10 occupational safety and health statistics. Each employer shall make, keep and  
11 preserve, and make available to the commissioner~~[executive director]~~ and the  
12 Secretary of the United States Department of Labor or the Secretary of the United  
13 States Department of Health and Human Resources, such records regarding his or  
14 her activities relating to this chapter as may be prescribed by regulation.

15 (2) The Department~~[Office]~~ of Workplace Standards~~[Occupational Safety and Health]~~  
16 shall also issue regulations requiring that employers, through posting of notices or  
17 other appropriate means, keep their employees informed of their protection and  
18 obligations under this chapter.

19 ➔Section 1764. KRS 338.171 is amended to read as follows:

20 All information obtained by the commissioner~~[executive director]~~ in connection with any  
21 inspection or proceeding under this chapter which might reveal a trade secret shall be  
22 considered confidential except that such information may be disclosed to those persons  
23 concerned with carrying out this chapter or when relevant in any proceedings under this  
24 chapter. In any such proceedings, the commissioner~~[executive director]~~, review  
25 commission or courts shall issue such orders as may be appropriate to protect the  
26 confidentiality of trade secrets.

27 ➔Section 1765. KRS 338.181 is amended to read as follows:

1 The Department~~[Office]~~ of Workplace Standards~~[Occupational Safety and Health]~~ is  
 2 empowered to administer the provisions of this chapter to employers, employees, and  
 3 places of employment under the jurisdiction of the United States government pursuant to  
 4 any agreement between the Commonwealth and the United States government. Pursuant  
 5 to such agreement, the Department~~[Office]~~ of Workplace Standards~~[Occupational Safety~~  
 6 ~~and Health]~~ is empowered to make employer reports and data available to the United  
 7 States government.

8 ➔Section 1766. KRS 338.191 is amended to read as follows:

9 It shall be the duty of the Attorney General, upon request of the commissioner~~[executive~~  
 10 ~~director]~~, to bring all necessary civil or criminal actions for violations of the provisions of  
 11 this chapter and to obtain injunctions against any person violating or threatening to  
 12 violate any provisions of this chapter. The Attorney General may appoint special counsel  
 13 to prosecute these claims. In the event special counsel is secured, all costs will be borne  
 14 by the ~~[Department of]~~Labor Cabinet.

15 ➔Section 1767. KRS 338.201 is amended to read as follows:

16 (1) A lien may be placed on all property, both real and personal, of an employer who  
 17 has violated any requirement of this chapter, if the citation issued by the  
 18 commissioner~~[executive director]~~ has been upheld by a final order of the review  
 19 commission, but not before all administrative and judicial appeals have been  
 20 exhausted. The lien shall be in favor of the ~~[Department of]~~Labor Cabinet and shall  
 21 be an amount totaling the penalties due, together with interest at a rate of twelve  
 22 percent (12%) per annum from the date the order of the review commission is final,  
 23 but not before all administrative and judicial appeals have been exhausted. The lien  
 24 shall be attached to all property and rights to property owned or subsequently  
 25 acquired by the employer. The commissioner~~[executive director]~~ or the  
 26 commissioner's~~[his]~~ designee shall record the lien as provided in subsection (2) of  
 27 this section. The lien shall show the date on which the citation was issued, the date

1 of the violation, the name and last known address of the employer against whom the  
 2 assessment was made, and the amount of penalties and interest. The lien shall be  
 3 superior to the lien of any mortgage or encumbrance thereafter created and shall  
 4 continue for ten (10) years from the time of the recording, unless sooner released or  
 5 otherwise discharged.

6 (2) The lien shall be filed in any of the following offices in which the employer owns  
 7 property or rights to property and any filing fees associated with filing the lien shall  
 8 be pursuant to KRS 64.012:

9 (a) The office of the county clerk of the county in which the defendant employer  
 10 resides.

11 (b) The office of the county clerk of the county in which the defendant employer  
 12 has its principal place of business.

13 (c) The office of the county clerk of any county in which the defendant employer  
 14 has property or an interest in property.

15 ➔Section 1768. KRS 338.991 is amended to read as follows:

16 (1) Any employer who willfully or repeatedly violates the requirement of any section of  
 17 this chapter, including any standard, regulation, or order promulgated pursuant to  
 18 this chapter, may be assessed a civil penalty of up to seventy thousand dollars  
 19 (\$70,000) for each violation, but not less than five thousand dollars (\$5,000) for  
 20 each willful violation.

21 (2) Any employer who has received a citation for a serious violation of the  
 22 requirements of any section of this chapter, including any standard, regulation, or  
 23 order promulgated pursuant to this chapter, shall be assessed a civil penalty of up to  
 24 seven thousand dollars (\$7,000) for each violation.

25 (3) Any employer who has received a citation for a violation of the requirements of any  
 26 section of this chapter, including any standard, regulation, or order promulgated  
 27 pursuant to this chapter, and such violation is specifically determined not to be of a

1       serious nature, may be assessed a civil penalty of up to seven thousand dollars  
2       (\$7,000) for each violation.

3       (4) Any employer who fails to correct a violation for which a citation has been issued  
4       within the period permitted for its correction may be assessed a civil penalty of up  
5       to seven thousand dollars (\$7,000) for each day during which such failure or  
6       violation continues.

7       (5) Any employer found to be in violation of subsection (3) of KRS 338.121 shall be  
8       assessed a civil penalty of up to ten thousand dollars (\$10,000) for each violation.

9       (6) The review commission shall have the authority to modify all civil penalties and  
10       fines provided for in this chapter. The review commission may, at its discretion,  
11       suspend the time period allotted for correction of a violation during the review of an  
12       appeal from the violation in question.

13       (7) All civil penalties and fines collected under the provision of this chapter shall be  
14       paid into the general fund.

15       (8) Any employer or individual who knowingly makes any false statement,  
16       representation, or certification in any application, record, report, plan, or other  
17       document filed or required to be maintained pursuant to this chapter shall, upon  
18       conviction, be punished by a fine of not more than ten thousand dollars (\$10,000),  
19       or by imprisonment for not more than six (6) months, or by both.

20       (9) Any person who gives advance notice of any investigation or inspection to be  
21       conducted under this chapter, without authority from the commissioner~~executive~~  
22       ~~director~~, shall, upon conviction, be punished by a fine of not more than one  
23       thousand dollars (\$1,000), or by imprisonment for not more than six (6) months, or  
24       by both.

25       (10) Any employer or individual who willfully causes bodily harm to any authorized  
26       representative of the commissioner~~executive director~~ while attempting to conduct  
27       an investigation or inspection under the provisions of this chapter, shall, upon

conviction, be punished by a fine of not more than ten thousand dollars (\$10,000), or by imprisonment for not more than one (1) year, or by both.

(11) As used in this section, a serious violation shall be deemed to exist in a place of employment if there is a substantial probability that death or serious physical harm could result from a condition which exists, or from one (1) or more practices, means, methods, operations, or processes which have been adopted or are in use, in such place of employment unless the employer did not, and could not with the exercise of reasonable diligence, know of the presence of the violation.

→Section 1769. KRS 339.205 is amended to read as follows:

As used in this chapter, "commissioner~~[executive-director]~~" shall mean the commissioner~~[executive-director]~~ of the Department~~[Office]~~ of Workplace Standards, under the direction and supervision of the secretary~~[commissioner]~~ of the ~~[Department of~~ Labor Cabinet.

→Section 1770. KRS 339.210 is amended to read as follows:

As used in KRS 339.220 to 339.450 "gainful occupation" does not include employment in farm work or in domestic service in a private home, nor occasional employment by a householder in connection with the household and not in connection with the householder's business or occupation, such as grass cutting or carrying ashes or similar casual domestic tasks, nor the delivery of newspapers on regularly scheduled routes, nor to employment as an actor or performer in motion pictures or theatrical productions, or in radio or television productions, nor to employment of minors by their own parents or persons standing in the place of a parent in occupations other than manufacturing, mining, or those found by the commissioner~~[executive-director]~~ of the Department~~[Office]~~ of Workplace Standards to be particularly hazardous.

→Section 1771. KRS 339.220 is amended to read as follows:

No minor under fourteen (14) years of age shall be employed, permitted or suffered to work in, about or in connection with any gainful occupation at any time, except for

1 employment in connection with an employment program supervised and sponsored by the  
 2 school or school district such child attends, which program has been approved by the  
 3 Department of Education and subject to the regulations of the commissioner~~executive~~  
 4 ~~director~~ of the Department~~Office~~ of Workplace Standards.

5 ➔Section 1772. KRS 339.225 is amended to read as follows:

6 (1) The provisions of KRS 339.220 to the contrary notwithstanding, minors age eleven  
 7 (11) years and over may be employed as caddies at golf courses subject to the  
 8 following provisions:

9 (a) A "caddy" is an individual who offers his or her services to golfers at golf  
 10 clubs both private and public. His or her duties during course of play include  
 11 the carrying of golf clubs, direction to the golfer, assistance to the player in the  
 12 general maintenance and upkeep of golf courses, including replacement of  
 13 divots, repair of ball marks, raking of sand traps, location of golf balls and  
 14 control of the pin. Duties normally referred to as "fore-caddying" or  
 15 "shagging" of golf balls are not within the scope of this definition.

16 (b) No minor under eleven (11) years of age shall be employed, or suffered to  
 17 work as a caddy for hire.

18 (c) Caddies under fourteen (14) years of age are restricted to caddying one (1)  
 19 round of eighteen (18) holes in any one (1) day.

20 (d) Minors eleven (11) and twelve (12) years of age may not carry golf bags and  
 21 are restricted to caddying with a "pull cart" only.

22 (e) Minors thirteen (13), fourteen (14), and fifteen (15) years of age may be  
 23 employed to carry golf bags provided the bags do not exceed thirty-five (35)  
 24 pounds in weight.

25 (f) No minor under sixteen (16) years of age shall be employed, permitted, or  
 26 suffered to operate power-driven golf carts in the course of their employment,  
 27 or any power-driven maintenance equipment.

(g) All persons employing minors as caddies are subject to all provisions of this chapter and the regulations issued hereunder.

(2) The Department~~{Office}~~ of Workplace Standards shall promulgate administrative regulations necessary to carry out the provisions of this section.

→ Section 1773. KRS 339.230 is amended to read as follows:

A minor who has passed his or her fourteenth birthday but is under eighteen (18) years of age may be employed, permitted, or suffered to work in, about, or in connection with any gainful occupation, except:

(1) If he or she is under sixteen (16) years of age, he or she may not be employed during regular school hours, unless:

(a) The school authorities have made arrangements for him or her to attend school at other than the regular hours, in which event he or she may be employed subject to regulations of the commissioner~~{executive-director}~~ of workplace standards during such of the regular school hours as he or she is not required to be in attendance under the arrangement; or~~{,}~~

(b) He or she has graduated from high school.

(2) A minor who has passed his or her fourteenth birthday but is under eighteen (18) years of age, may not be employed, permitted, or suffered to work:

(a) In any place of employment or at any occupation, that the commissioner~~{executive-director}~~ of workplace standards shall determine to be hazardous or injurious to the life, health, safety, or welfare of such minor;

(b) More than the number of days per week, nor more than the number of hours per day that the commissioner~~{executive-director}~~ of workplace standards shall determine to be injurious to the life, health, safety, or welfare of such minor. The commissioner~~{executive-director}~~ of workplace standards in promulgating these regulations may make them more restrictive than those promulgated by the United States Secretary of Labor under provisions of the

1 Fair Labor Standards Act and its amendments, but in no event may he or she  
 2 make them less restrictive;

3 (c) During the hours of the day that the commissioner~~executive director~~ of  
 4 workplace standards shall determine to be injurious to the life, health, safety,  
 5 or welfare of such minor. The commissioner~~executive director~~ of workplace  
 6 standards in promulgating these regulations may make them more restrictive  
 7 than those promulgated by the United States Secretary of Labor under  
 8 provisions of the Fair Labor Standards Act and its amendments but in no  
 9 event may he or she make them less restrictive; and

10 (d) In, about, or in connection with any establishment where alcoholic liquors are  
 11 distilled, rectified, compounded, brewed, manufactured, bottled, sold for  
 12 consumption, or dispensed unless permitted by the rules and regulations of the  
 13 Alcoholic Beverage Control Board (except that he or she may be employed in  
 14 places where the sale of alcoholic beverages by the package is merely  
 15 incidental to the main business actually conducted); or in a pool or billiard  
 16 room.

17 (3) The commissioner~~executive director~~ of workplace standards shall promulgate  
 18 regulations to properly protect the life, health, safety, or welfare of minors. He or  
 19 she may consider sex, age, premises of employment, substances to be worked with,  
 20 machinery to be operated, number of hours, hours of the day, nature of the  
 21 employment, and other pertinent factors. The commissioner~~executive director~~ of  
 22 workplace standards in promulgating these regulations may make them more  
 23 restrictive than those promulgated by the United States Secretary of Labor under  
 24 provisions of the Fair Labor Standards Act and its amendments but in no event may  
 25 he or she make them less restrictive, provided, however, these regulations shall  
 26 have no effect on the definition of "gainful occupation" under KRS 339.210. To  
 27 advise the commissioner~~executive director~~ with respect to the regulations, the



1 Governor shall appoint a committee of four (4) persons which shall consist of a  
 2 representative from the Cabinet for Health and Family Services, the Department of  
 3 Education, the Kentucky Commission on Human Rights and the Personnel Cabinet.  
 4 The regulations promulgated in accordance with this section shall be reviewed by  
 5 such committee whenever deemed necessary by the commissioner~~executive~~  
 6 ~~director~~ of workplace standards.

7 ➔Section 1774. KRS 339.400 is amended to read as follows:

8 Every person employing minors under eighteen (18) years of age shall keep a separate  
 9 register containing the names, ages, and addresses of such employees, and the time of  
 10 commencing and stopping of work for each day, and the time of the beginning and ending  
 11 of the daily meal period, and shall post and keep conspicuously posted in the  
 12 establishment wherein any such minor is employed, permitted, or suffered to work, a  
 13 printed abstract of KRS 339.210 to 339.450, and a list of the occupations prohibited to  
 14 such minors, together with a notice stating the working hours per day for each day in the  
 15 week required of them. These records and files shall be open at all times to the inspection  
 16 of the school directors of pupil personnel and probation officers, and representatives of  
 17 the ~~{Department of}~~Labor Cabinet and Department of Education.

18 ➔Section 1775. KRS 339.450 is amended to read as follows:

19 (1) It shall be the duty of the Department~~{Office}~~ of Workplace Standards and of the  
 20 inspectors and agents of said department~~{office}~~, with the assistance of the school  
 21 directors of pupil personnel, police officers and juvenile session of District Court  
 22 probation officers, to enforce the provisions of KRS 339.210 to 339.450, to make  
 23 complaints against persons violating the provisions of those sections, and to  
 24 prosecute violations thereof. The Department~~{Office}~~ of Workplace Standards, its  
 25 inspectors and agents shall have authority to enter and inspect at any time any place  
 26 or establishment covered by KRS 339.210 to 339.450, and to have access to age  
 27 certificates kept on file by the employer and such other records as may aid in the

1 enforcement of KRS 339.210 to 339.450. School directors of pupil personnel are  
 2 likewise empowered to visit and inspect places where minors may be employed, and  
 3 shall report any cases of employment that they find in violation of KRS 339.210 to  
 4 339.450 to the Department~~{Office}~~ of Workplace Standards.

- 5 (2) Any person authorized to enforce KRS 339.210 to 339.450 may require an  
 6 employer of a minor for whom an age certificate is not on file either to furnish him  
 7 or her within ten (10) days the evidence showing that the minor is at least eighteen  
 8 (18) years of age or to cease to employ or permit or suffer such minor to work.  
 9 Proof of the making of such demand and of failure to deliver such proof of age shall  
 10 be prima facie evidence, in any prosecution brought for violation of KRS 339.210 to  
 11 339.450, that such minor is under eighteen (18) years of age and is unlawfully  
 12 employed.

13 ➔Section 1776. KRS 339.990 is amended to read as follows:

14 Anyone who employs or permits or suffers any minor to be employed or to work in  
 15 violation of KRS 339.210 to 339.450, or of any order or ruling issued under the  
 16 provisions thereof, or obstructs the Department~~{Office}~~ of Workplace Standards, its  
 17 officers, or agents, or any other person authorized to inspect places of employment under  
 18 KRS 339.210 to 339.450, or anyone who, having under his or her control or custody any  
 19 minor, permits or suffers him or her to be employed or to work in violation of KRS  
 20 339.210 to 339.450, or who sells to a minor any article with the knowledge that the minor  
 21 intends to sell the article in violation of KRS 339.210 to 339.450, shall be assessed a civil  
 22 penalty, in accordance with the provisions of KRS 336.985, of not less than one hundred  
 23 dollars (\$100) nor more than one thousand dollars (\$1,000). Every employer who  
 24 continues to employ a minor in violation of KRS 339.210 to 339.450 after he has been  
 25 notified by the Department~~{Office}~~ of Workplace Standards, its officers or agents, shall  
 26 be assessed a civil penalty, in accordance with the provisions of KRS 336.985, of one  
 27 hundred dollars (\$100) for each day the violation continues and the employment of any

1 minor in violation of KRS 339.210 to 339.450 shall with respect to each minor so  
2 employed constitute a separate and distinct offense.

3 ➔Section 1777. KRS 342.0011 is amended to read as follows:

4 As used in this chapter, unless the context otherwise requires:

- 5 (1) "Injury" means any work-related traumatic event or series of traumatic events,  
6 including cumulative trauma, arising out of and in the course of employment which  
7 is the proximate cause producing a harmful change in the human organism  
8 evidenced by objective medical findings. "Injury" does not include the effects of the  
9 natural aging process, and does not include any communicable disease unless the  
10 risk of contracting the disease is increased by the nature of the employment.  
11 "Injury" when used generally, unless the context indicates otherwise, shall include  
12 an occupational disease and damage to a prosthetic appliance, but shall not include  
13 a psychological, psychiatric, or stress-related change in the human organism, unless  
14 it is a direct result of a physical injury;
- 15 (2) "Occupational disease" means a disease arising out of and in the course of the  
16 employment;
- 17 (3) An occupational disease as defined in this chapter shall be deemed to arise out of  
18 the employment if there is apparent to the rational mind, upon consideration of all  
19 the circumstances, a causal connection between the conditions under which the  
20 work is performed and the occupational disease, and which can be seen to have  
21 followed as a natural incident to the work as a result of the exposure occasioned by  
22 the nature of the employment and which can be fairly traced to the employment as  
23 the proximate cause. The occupational disease shall be incidental to the character of  
24 the business and not independent of the relationship of employer and employee. An  
25 occupational disease need not have been foreseen or expected but, after its  
26 contraction, it must appear to be related to a risk connected with the employment  
27 and to have flowed from that source as a rational consequence;

- 1 (4) "Injurious exposure" shall mean that exposure to occupational hazard which would,  
 2 independently of any other cause whatsoever, produce or cause the disease for  
 3 which the claim is made;
- 4 (5) "Death" means death resulting from an injury or occupational disease;
- 5 (6) "Carrier" means any insurer, or legal representative thereof, authorized to insure the  
 6 liability of employers under this chapter and includes a self-insurer;
- 7 (7) "Self-insurer" is an employer who has been authorized under the provisions of this  
 8 chapter to carry his own liability on his employees covered by this chapter;
- 9 (8) "Department~~[Office]~~" means the Department~~[Office]~~ of Workers' Claims in the  
 10 ~~[Department of]~~Labor Cabinet;
- 11 (9) "Commissioner~~[Executive director]~~" means the commissioner~~[executive director]~~  
 12 of the Department~~[Office]~~ of Workers' Claims;
- 13 (10) "Board" means the Workers' Compensation Board;
- 14 (11) (a) "Temporary total disability" means the condition of an employee who has not  
 15 reached maximum medical improvement from an injury and has not reached a  
 16 level of improvement that would permit a return to employment;
- 17 (b) "Permanent partial disability" means the condition of an employee who, due to  
 18 an injury, has a permanent disability rating but retains the ability to work; and
- 19 (c) "Permanent total disability" means the condition of an employee who, due to  
 20 an injury, has a permanent disability rating and has a complete and permanent  
 21 inability to perform any type of work as a result of an injury, except that total  
 22 disability shall be irrebuttably presumed to exist for an injury that results in:
- 23 1. Total and permanent loss of sight in both eyes;
  - 24 2. Loss of both feet at or above the ankle;
  - 25 3. Loss of both hands at or above the wrist;
  - 26 4. Loss of one (1) foot at or above the ankle and the loss of one (1) hand at  
 27 or above the wrist;

- 1           5. Permanent and complete paralysis of both arms, both legs, or one (1)  
2           arm and one (1) leg;
- 3           6. Incurable insanity or imbecility; or
- 4           7. Total loss of hearing;
- 5   (12) "Income benefits" means payments made under the provisions of this chapter to the  
6       disabled worker or his dependents in case of death, excluding medical and related  
7       benefits;
- 8   (13) "Medical and related benefits" means payments made for medical, hospital, burial,  
9       and other services as provided in this chapter, other than income benefits;
- 10   (14) "Compensation" means all payments made under the provisions of this chapter  
11       representing the sum of income benefits and medical and related benefits;
- 12   (15) "Medical services" means medical, surgical, dental, hospital, nursing, and medical  
13       rehabilitation services, medicines, and fittings for artificial or prosthetic devices;
- 14   (16) "Person" means any individual, partnership, limited partnership, limited liability  
15       company, firm, association, trust, joint venture, corporation, or legal representative  
16       thereof;
- 17   (17) "Wages" means, in addition to money payments for services rendered, the  
18       reasonable value of board, rent, housing, lodging, fuel, or similar advantages  
19       received from the employer, and gratuities received in the course of employment  
20       from persons other than the employer as evidenced by the employee's federal and  
21       state tax returns;
- 22   (18) "Agriculture" means the operation of farm premises, including the planting,  
23       cultivation, producing, growing, harvesting, and preparation for market of  
24       agricultural or horticultural commodities thereon, the raising of livestock for food  
25       products and for racing purposes, and poultry thereon, and any work performed as  
26       an incident to or in conjunction with the farm operations, including the sale of  
27       produce at on-site markets and the processing of produce for sale at on-site markets.

1 It shall not include the commercial processing, packing, drying, storing, or canning  
2 of such commodities for market, or making cheese or butter or other dairy products  
3 for market;

4 (19) "Beneficiary" means any person who is entitled to income benefits or medical and  
5 related benefits under this chapter;

6 (20) "United States," when used in a geographic sense, means the several states, the  
7 District of Columbia, the Commonwealth of Puerto Rico, the Canal Zone, and the  
8 territories of the United States;

9 (21) "Alien" means a person who is not a citizen, a national, or a resident of the United  
10 States or Canada. Any person not a citizen or national of the United States who  
11 relinquishes or is about to relinquish his residence in the United States shall be  
12 regarded as an alien;

13 (22) "Insurance carrier" means every insurance carrier or insurance company authorized  
14 to do business in the Commonwealth writing workers' compensation insurance  
15 coverage and includes the Kentucky Employers Mutual Insurance Authority and  
16 every self-insured group operating under the provisions of this chapter;

17 (23) (a) "Severance or processing of coal" means all activities performed in the  
18 Commonwealth at underground, auger, and surface mining sites; all activities  
19 performed at tipple or processing plants that clean, break, size, or treat coal;  
20 and all activities performed at coal loading facilities for trucks, railroads, and  
21 barges. Severance or processing of coal shall not include acts performed by a  
22 final consumer if the acts are performed at the site of final consumption;

23 (b) "Engaged in severance or processing of coal" shall include all individuals,  
24 partnerships, limited partnerships, limited liability companies, corporations,  
25 joint ventures, associations, or any other business entity in the Commonwealth  
26 which has employees on its payroll who perform any of the acts stated in  
27 paragraph (a) of this subsection, regardless of whether the acts are performed

as owner of the coal or on a contract or fee basis for the actual owner of the coal. A business entity engaged in the severance or processing of coal, including but not limited to administrative or selling functions, shall be considered wholly engaged in the severance or processing of coal for the purpose of this chapter. However, a business entity which is engaged in a separate business activity not related to coal, for which a separate premium charge is not made, shall be deemed to be engaged in the severance or processing of coal only to the extent that the number of employees engaged in the severance or processing of coal bears to the total number of employees. Any employee who is involved in the business of severing or processing of coal and business activities not related to coal shall be prorated based on the time involved in severance or processing of coal bears to his total time;

(24) "Premium" for every self-insured group means any and all assessments levied on its members by such group or contributed to it by the members thereof. For special fund assessment purposes, "premium" also includes any and all membership dues, fees, or other payments by members of the group to associations or other entities used for underwriting, claims handling, loss control, premium audit, actuarial, or other services associated with the maintenance or operation of the self-insurance group;

(25) (a) "Premiums received" for policies effective on or after January 1, 1994, for insurance companies means direct written premiums as reported in the annual statement to the Department~~Office~~ of Insurance by insurance companies, except that "premiums received" includes premiums charged off or deferred, and, on insurance policies or other evidence of coverage with provisions for deductibles, the calculated cost for coverage, including experience modification and premium surcharge or discount, prior to any reduction for deductibles. The rates, factors, and methods used to calculate the cost for

1 coverage under this paragraph for insurance policies or other evidence of  
2 coverage with provisions for deductibles shall be the same rates, factors, and  
3 methods normally used by the insurance company in Kentucky to calculate the  
4 cost for coverage for insurance policies or other evidence of coverage without  
5 provisions for deductibles, except that, for insurance policies or other  
6 evidence of coverage with provisions for deductibles effective on or after  
7 January 1, 1995, the calculated cost for coverage shall not include any  
8 schedule rating modification, debits, or credits. The cost for coverage  
9 calculated under this paragraph by insurance companies that issue only  
10 deductible insurance policies in Kentucky shall be actuarially adequate to  
11 cover the entire liability of the employer for compensation under this chapter,  
12 including all expenses and allowances normally used to calculate the cost for  
13 coverage. For policies with provisions for deductibles with effective dates of  
14 May 6, 1993, through December 31, 1993, for which the insurance company  
15 did not report premiums and remit special fund assessments based on the  
16 calculated cost for coverage prior to the reduction for deductibles, "premiums  
17 received" includes the initial premium plus any reimbursements invoiced for  
18 losses, expenses, and fees charged under the deductibles. The special fund  
19 assessment rates in effect for reimbursements invoiced for losses, expenses, or  
20 fees charged under the deductibles shall be those percentages in effect on the  
21 effective date of the insurance policy. For policies covering leased employees  
22 as defined in KRS 342.615, "premiums received" means premiums calculated  
23 using the experience modification factor of each lessee as defined in KRS  
24 342.615 for each leased employee for that portion of the payroll pertaining to  
25 the leased employee.

26 (b) "Direct written premium" for insurance companies means the gross premium  
27 written less return premiums and premiums on policies not taken but



1 including policy and membership fees.

2 (c) "Premium," for policies effective on or after January 1, 1994, for insurance  
3 companies means all consideration, whether designated as premium or  
4 otherwise, for workers' compensation insurance paid to an insurance company  
5 or its representative, including, on insurance policies with provisions for  
6 deductibles, the calculated cost for coverage, including experience  
7 modification and premium surcharge or discount, prior to any reduction for  
8 deductibles. The rates, factors, and methods used to calculate the cost for  
9 coverage under this paragraph for insurance policies or other evidence of  
10 coverage with provisions for deductibles shall be the same rates, factors, and  
11 methods normally used by the insurance company in Kentucky to calculate the  
12 cost for coverage for insurance policies or other evidence of coverage without  
13 provisions for deductibles, except that, for insurance policies or other  
14 evidence of coverage with provisions for deductibles effective on or after  
15 January 1, 1995, the calculated cost for coverage shall not include any  
16 schedule rating modifications, debits, or credits. The cost for coverage  
17 calculated under this paragraph by insurance companies that issue only  
18 deductible insurance policies in Kentucky shall be actuarially adequate to  
19 cover the entire liability of the employer for compensation under this chapter,  
20 including all expenses and allowances normally used to calculate the cost for  
21 coverage. For policies with provisions for deductibles with effective dates of  
22 May 6, 1993, through December 31, 1993, for which the insurance company  
23 did not report premiums and remit special fund assessments based on the  
24 calculated cost for coverage prior to the reduction for deductibles, "premium"  
25 includes the initial consideration plus any reimbursements invoiced for losses,  
26 expenses, or fees charged under the deductibles.

27 (d) "Return premiums" for insurance companies means amounts returned to

1           insureds due to endorsements, retrospective adjustments, cancellations,  
2           dividends, or errors;

3   (26) "Insurance policy" for an insurance company or self-insured group means the term  
4       of insurance coverage commencing from the date coverage is extended, whether a  
5       new policy or a renewal, through its expiration, not to exceed the anniversary date  
6       of the renewal for the following year;

7   (27) "Self-insurance year" for a self-insured group means the annual period of  
8       certification of the group created pursuant to KRS 342.350(4) and 304.50-010;

9   (28) "Premium" for each employer carrying his own risk pursuant to KRS 342.340(1)  
10       shall be the projected value of the employer's workers' compensation claims for the  
11       next calendar year as calculated by the commissioner~~executive director~~ using  
12       generally-accepted actuarial methods as follows:

13       (a) The base period shall be the earliest three (3) calendar years of the five (5)  
14           calendar years immediately preceding the calendar year for which the  
15           calculation is made. The commissioner~~executive director~~ shall identify each  
16           claim of the employer which has an injury date or date of last injurious  
17           exposure to the cause of an occupational disease during each one (1) of the  
18           three (3) calendar years to be used as the base, and shall assign a value to each  
19           claim. The value shall be the total of the indemnity benefits paid to date and  
20           projected to be paid, adjusted to current benefit levels, plus the medical  
21           benefits paid to date and projected to be paid for the life of the claim, plus the  
22           cost of medical and vocational rehabilitation paid to date and projected to be  
23           paid. Adjustment to current benefit levels shall be done by multiplying the  
24           weekly indemnity benefit for each claim by the number obtained by dividing  
25           the statewide average weekly wage which will be in effect for the year for  
26           which the premium is being calculated by the statewide average weekly wage  
27           in effect during the year in which the injury or date of the last exposure

1 occurred. The total value of the claims using the adjusted weekly benefit shall  
 2 then be calculated by the commissioner~~executive director~~. Values for claims  
 3 in which awards have been made or settlements reached because of findings  
 4 of permanent partial or permanent total disability shall be calculated using the  
 5 mortality and interest discount assumptions used in the latest available  
 6 statistical plan of the advisory rating organization defined in Subtitle 13 of  
 7 KRS Chapter 304. The sum of all calculated values shall be computed for all  
 8 claims in the base period;

9 (b) The commissioner~~executive director~~ shall obtain the annual payroll for each  
 10 of the three (3) years in the base period for each employer carrying his own  
 11 risk from records of the department~~office~~ and from the records of the Office  
 12 of Employment and Training, Education and Workforce Development  
 13 Cabinet. The commissioner~~executive director~~ shall multiply each of the  
 14 three (3) years of payroll by the number obtained by dividing the statewide  
 15 average weekly wage which will be in effect for the year in which the  
 16 premium is being calculated by the statewide average weekly wage in effect in  
 17 each of the years of the base period;

18 (c) The commissioner~~executive director~~ shall divide the total of the adjusted  
 19 claim values for the three (3) year base period by the total adjusted payroll for  
 20 the same three (3) year period. The value so calculated shall be multiplied by  
 21 1.25 and shall then be multiplied by the employer's most recent annualized  
 22 payroll, calculated using records of the department~~office~~ and the Office of  
 23 Employment and Training data which shall be made available for this purpose  
 24 on a quarterly basis as reported, to obtain the premium for the next calendar  
 25 year for assessment purposes under KRS 342.122;

26 (d) For November 1, 1987, through December 31, 1988, premium for each  
 27 employer carrying its~~his~~ own risk shall be an amount calculated by the board

1 pursuant to the provisions contained in this subsection and such premium  
 2 shall be provided to each employer carrying its[his] own risk and to the  
 3 funding commission on or before January 1, 1988. Thereafter, the calculations  
 4 set forth in this subsection shall be performed annually, at the time each  
 5 employer applies or renews its[his] application for certification to carry  
 6 its[his] own risk for the next twelve (12) month period and submits payroll  
 7 and other data in support of the application. The employer and the funding  
 8 commission shall be notified at the time of the certification or recertification  
 9 of the premium calculated by the commissioner[~~executive director~~], which  
 10 shall form the employer's basis for assessments pursuant to KRS 342.122 for  
 11 the calendar year beginning on January 1 following the date of certification or  
 12 recertification;

13 (e) If an employer having fewer than five (5) years of doing business in this state  
 14 applies to carry its[his] own risk and is so certified, its[his] premium for the  
 15 purposes of KRS 342.122 shall be based on the lesser number of years of  
 16 experience as may be available including the two (2) most recent years if  
 17 necessary to create a three (3) year base period. If the employer has less than  
 18 two (2) years of operation in this state available for the premium calculation,  
 19 then its[his] premium shall be the greater of the value obtained by the  
 20 calculation called for in this subsection or the amount of security required by  
 21 the commissioner[~~executive director~~] pursuant to KRS 342.340(1);

22 (f) If an employer is certified to carry its[his] own risk after having previously  
 23 insured the risk, its[his] premium shall be calculated using values obtained  
 24 from claims incurred while insured for as many of the years of the base period  
 25 as may be necessary to create a full three (3) year base. After the employer is  
 26 certified to carry its[his] own risk and has paid all amounts due for  
 27 assessments upon premiums paid while insured, the employer[~~he~~] shall be

- 1           assessed only upon the premium calculated under this subsection;
- 2           (g) "Premium" for each employer defined in KRS 342.630(2) shall be calculated
- 3           as set forth in this subsection; and
- 4           (h) Notwithstanding any other provision of this subsection, the premium of any
- 5           employer authorized to carry its own risk for purposes of assessments due
- 6           under this chapter shall be no less than thirty cents (\$0.30) per one hundred
- 7           dollars (\$100) of the employer's most recent annualized payroll for employees
- 8           covered by this chapter;
- 9   (29) "SIC code" as used in this chapter means the Standard Industrial Classification
- 10       Code contained in the latest edition of the Standard Industrial Classification Manual
- 11       published by the Federal Office of Management and Budget;
- 12   (30) "Investment interest" means any pecuniary or beneficial interest in a provider of
- 13       medical services or treatment under this chapter, other than a provider in which that
- 14       pecuniary or investment interest is obtained on terms equally available to the public
- 15       through trading on a registered national securities exchange, such as the New York
- 16       Stock Exchange or the American Stock Exchange, or on the National Association of
- 17       Securities Dealers Automated Quotation System;
- 18   (31) "Managed health care system" means a health care system that employs gatekeeper
- 19       providers, performs utilization review, and does medical bill audits;
- 20   (32) "Physician" means physicians and surgeons, psychologists, optometrists, dentists,
- 21       podiatrists, and osteopathic and chiropractic practitioners acting within the scope of
- 22       their license issued by the Commonwealth;
- 23   (33) "Objective medical findings" means information gained through direct observation
- 24       and testing of the patient applying objective or standardized methods;
- 25   (34) "Work" means providing services to another in return for remuneration on a regular
- 26       and sustained basis in a competitive economy;
- 27   (35) "Permanent impairment rating" means percentage of whole body impairment caused

1 by the injury or occupational disease as determined by "Guides to the Evaluation of  
 2 Permanent Impairment," American Medical Association, latest available edition;  
 3 and

4 (36) "Permanent disability rating" means the permanent impairment rating selected by an  
 5 administrative law judge times the factor set forth in the table that appears at KRS  
 6 342.730(1)(b).

7 ➔Section 1778. KRS 342.0012 is amended to read as follows:

8 (1) There is hereby created the Kentucky Workers' Compensation Advisory Council  
 9 which shall consist of sixteen (16) members appointed by the Governor. Each  
 10 member shall serve for a term of four (4) years and until his or her successor has  
 11 been appointed and has qualified.

12 (2) Vacancies shall be filled by appointment of the Governor for the unexpired term of  
 13 the member whose office is vacant and shall be made within sixty (60) days of the  
 14 occurrence of the vacancy.

15 (3) Annually, the members of the council shall elect co-chairmen. One co-chairman  
 16 shall be elected by the members of the council representing labor and the other co-  
 17 chairman shall be elected by the members representing management. A majority of  
 18 the members of the council shall constitute a quorum for the transaction of business.

19 (4) The council shall meet at least quarterly and on other occasions as may be  
 20 necessary, on the call of the co-chairmen or a majority of the members.

21 (5) The council shall be attached to the Department of Workers' Claims in the Labor  
 22 Cabinet for administrative purposes, and the commissioner of the Department of  
 23 Workers' Claims~~[labor]~~ shall supply necessary staff and supplies to the council.

24 (6) The principal office of the council shall be located in Frankfort, Kentucky, but  
 25 meetings of the council may be held at any location in the Commonwealth of  
 26 Kentucky.

27 (7) In making appointments to the council, the Governor shall appoint eight (8)

1 members representing labor and eight (8) members representing management.

- 2 (8) The council shall not infringe upon or assume the duties of the ~~{Department of~~  
 3 ~~}Labor Cabinet, Cabinet for Economic Development or the Department~~{Office}~~ of~~  
 4 Insurance. The council shall serve in an advisory capacity and shall make  
 5 recommendations to the Governor and the legislature on all matters relating to  
 6 workers' compensation including, but not limited to: efficient administration;  
 7 coverage of employers and employees; adequacy and delivery of the benefit  
 8 structure; insurance and self-insurance; medical cost containment and medical  
 9 services; rehabilitation; liability and financing of the special fund; attorney fees; and  
 10 lump-sum compensation and settlement procedures. In addition, the council may  
 11 recommend legislation and administrative regulations as it deems necessary.

12 ➔Section 1779. KRS 342.012 is amended to read as follows:

- 13 (1) For the purposes of this chapter, an owner or owners of a business, including  
 14 qualified partners of a partnership owning a business, or qualified members of a  
 15 limited liability company, whether or not employing any other person to perform a  
 16 service for hire, shall be included within the meaning of the term employee if the  
 17 owner, owners, qualified partners, or qualified members of a limited liability  
 18 company elect to come under the provisions of this chapter and provide the  
 19 insurance required thereunder. Nothing in this section shall be construed to limit the  
 20 responsibilities of the owners, partners, or members of a limited liability company  
 21 to provide coverage for their employees, nonqualified partners, or nonqualified  
 22 members, if any, required under this chapter.
- 23 (2) When an owner, owners, qualified partners, or qualified members of a limited  
 24 liability company have elected to be included as employees, this inclusion shall be  
 25 accomplished by the issuance of an appropriate endorsement to a workers'  
 26 compensation insurance policy.
- 27 (3) For the purpose of this section, "qualified partner" or "qualified member or

members" means, respectively, a partner who has entered into a meaningful partnership agreement or a member who has entered into meaningful articles of organization or a meaningful operating agreement of a limited liability company, which document shows on its face that the partner will substantially participate in the profit or loss of the business engaged in by the partnership or limited liability company and that the partner or member has made some contribution to the partnership or limited liability company which entitles him or her to participate in the profits of the business as well as to participate in the decision-making process of the partnership or limited liability company.

(4) For the purposes of this section, "nonqualified partner" or "nonqualified member" means, respectively, a person who has entered into a partnership agreement, or articles of organization or operating agreement of a limited liability company, which document shows on its face that this person will receive regular payments in exchange for work for the business engaged in by the partnership or limited liability company; that the person will not participate in the decision-making of the partnership or limited liability company and will not participate in the profits and losses of the business engaged in by the partnership or limited liability company.

(5) Every partnership filing a partnership agreement and every limited liability company filing articles of organization or an operating agreement for the purpose of exemption pursuant to the provisions of KRS 342.340 shall, on or before April 15 of each year, file with the commissioner~~[executive director]~~ the employer identification number assigned to the partnership or limited liability company by the Internal Revenue Service. On or before April 15 of each year, each partnership and each limited liability company having a partnership agreement, operating agreement, or articles of organization on file with the commissioner~~[executive director]~~ shall file a copy of the tax return of the partnership or limited liability company with the commissioner~~[executive director]~~. Failure to comply with the



provisions of this subsection shall be prima facie evidence that the partnership agreement or limited liability company articles of organization filed with the commissioner~~executive director~~ is composed, respectively, of "nonqualified partners" or "nonqualified members", respectively, as defined in this section, and the commissioner~~executive director~~ shall promptly notify interested government agencies of the failure of the filed partnership agreement or limited liability company articles of organization or operating agreement to indicate compliance with KRS 342.340. With particular reference to employers engaged in coal mining, the commissioner~~executive director~~ shall promptly report the failure to comply with the provisions of this subsection to the Energy~~Environmental~~ and Environment~~Public Protection~~ Cabinet, Department for~~of~~ Natural Resources, Office of Mine Safety and Licensing, so that appropriate action may be undertaken pursuant to KRS 351.175.

- (6) For purposes of this section, a "limited liability company" means an entity defined in KRS 275.015 and organized under the provisions of KRS Chapter 275.

➔ Section 1780. KRS 342.020 is amended to read as follows:

- (1) In addition to all other compensation provided in this chapter, the employer shall pay for the cure and relief from the effects of an injury or occupational disease the medical, surgical, and hospital treatment, including nursing, medical, and surgical supplies and appliances, as may reasonably be required at the time of the injury and thereafter during disability, or as may be required for the cure and treatment of an occupational disease. The employer's obligation to pay the benefits specified in this section shall continue for so long as the employee is disabled regardless of the duration of the employee's income benefits. In the absence of designation of a managed health care system by the employer, the employee may select medical providers to treat his injury or occupational disease. Even if the employer has designated a managed health care system, the injured employee may elect to

1 continue treating with a physician who provided emergency medical care or  
 2 treatment to the employee. The employer, insurer, or payment obligor acting on  
 3 behalf of the employer, shall make all payments for services rendered to an  
 4 employee directly to the provider of the services within thirty (30) days of receipt of  
 5 a statement for services. The commissioner~~executive director~~ shall promulgate  
 6 administrative regulations establishing conditions under which the thirty (30) day  
 7 period for payment may be tolled. The provider of medical services shall submit the  
 8 statement for services within forty-five (45) days of the day treatment is initiated  
 9 and every forty-five (45) days thereafter, if appropriate, as long as medical services  
 10 are rendered. Except as provided in subsection (4) of this section, in no event shall a  
 11 medical fee exceed the limitations of an adopted medical fee schedule or other  
 12 limitations contained in KRS 342.035, whichever is lower. The  
 13 commissioner~~executive director~~ may promulgate administrative regulations  
 14 establishing the form and content of a statement for services and procedures by  
 15 which disputes relative to the necessity, effectiveness, frequency, and cost of  
 16 services may be resolved.

17 (2) Notwithstanding any provision of the Kentucky Revised Statutes to the contrary,  
 18 medical services and treatment provided under this chapter shall not be subject to  
 19 copayments or deductibles.

20 (3) Employers may provide medical services through a managed health care system.  
 21 The managed health care system shall file with the Department~~Office~~ of Workers'  
 22 Claims a plan for the rendition of health care services for work-related injuries and  
 23 occupational diseases to be approved by the commissioner~~executive director~~  
 24 pursuant to administrative regulations promulgated by the commissioner~~executive~~  
 25 ~~director~~.

26 (4) All managed health care systems rendering medical services under this chapter shall  
 27 include the following features in plans for workers' compensation medical care:

- 1 (a) Copayments or deductibles shall not be required for medical services rendered
- 2 in connection with a work-related injury or occupational disease;
- 3 (b) The employee shall be allowed choice of provider within the plan;
- 4 (c) The managed health care system shall provide an informal procedure for the
- 5 expeditious resolution of disputes concerning rendition of medical services;
- 6 (d) The employee shall be allowed to obtain a second opinion, at the employer's
- 7 expense, from an outside physician if a managed health care system physician
- 8 recommends surgery;
- 9 (e) The employee may obtain medical services from providers outside the
- 10 managed health care system, at the employer's expense, when treatment is
- 11 unavailable through the managed health care system;
- 12 (f) The managed health care system shall establish procedures for utilization
- 13 review of medical services to assure that a course of treatment is reasonably
- 14 necessary; diagnostic procedures are not unnecessarily duplicated; the
- 15 frequency, scope, and duration of treatment is appropriate; pharmaceuticals
- 16 are not unnecessarily prescribed; and that ongoing and proposed treatment is
- 17 not experimental, cost ineffective, or harmful to the employee; and
- 18 (g) Statements for services shall be audited regularly to assure that charges are not
- 19 duplicated and do not exceed those authorized in the applicable fee schedules.
- 20 (h) A schedule of fees for all medical services to be provided under this chapter
- 21 which shall not be subject to the limitations on medical fees contained in this
- 22 chapter.
- 23 (i) Restrictions on provider selection imposed by a managed health care system
- 24 authorized by this chapter shall not apply to emergency medical care.
- 25 (5) Except for emergency medical care, medical services rendered pursuant to this
- 26 chapter shall be under the supervision of a single treating physician or physicians'
- 27 group having the authority to make referrals, as reasonably necessary, to appropriate

1 facilities and specialists. The employee may change his designated physician one (1)  
2 time and thereafter shall show reasonable cause in order to change physicians.

3 (6) When a compensable injury or occupational disease results in the amputation of an  
4 arm, leg, or foot, or the loss of hearing, or the enucleation of an eye or loss of teeth,  
5 the employer shall pay for, in addition to the other medical, surgical, and hospital  
6 treatment enumerated in subsection (1) and this subsection, a modern artificial  
7 member and, where required, proper braces as may reasonably be required at the  
8 time of the injury and thereafter during disability.

9 (7) Upon motion of the employer, with sufficient notice to the employee for a response  
10 to be filed, if it is shown to the satisfaction of the administrative law judge by  
11 affidavits or testimony that, because of the physician selected by the employee to  
12 treat the injury or disease, or because of the hospital selected by the employee in  
13 which treatment is being rendered, that the employee is not receiving proper  
14 medical treatment and the recovery is being substantially affected or delayed; or that  
15 the funds for medical expenses are being spent without reasonable benefit to the  
16 employee; or that because of the physician selected by the employee or because of  
17 the type of medical treatment being received by the employee that the employer will  
18 substantially be prejudiced in any compensation proceedings resulting from the  
19 employee's injury or disease; then the administrative law judge may allow the  
20 employer to select a physician to treat the employee and the hospital or hospitals in  
21 which the employee is treated for the injury or disease. No action shall be brought  
22 against any employer subject to this chapter by any person to recover damages for  
23 malpractice or improper treatment received by any employee from any physician,  
24 hospital, or attendant thereof.

25 (8) An employee who reports an injury alleged to be work-related or files an application  
26 for adjustment of a claim shall execute a waiver and consent of any physician-  
27 patient, psychiatrist-patient, or chiropractor-patient privilege with respect to any

condition or complaint reasonably related to the condition for which the employee claims compensation. Notwithstanding any other provision in the Kentucky Revised Statutes, any physician, psychiatrist, chiropractor, podiatrist, hospital, or health care provider shall, within a reasonable time after written request by the employee, employer, workers' compensation insurer, special fund, uninsured employers' fund, or the administrative law judge, provide the requesting party with any information or written material reasonably related to any injury or disease for which the employee claims compensation.

(9) When a provider of medical services or treatment, required by this chapter, makes referrals for medical services or treatment by this chapter, to a provider or entity in which the provider making the referral has an investment interest, the referring provider shall disclose that investment interest to the employee, the commissioner~~executive director~~, and the employer's insurer or the party responsible for paying for the medical services or treatment, within thirty (30) days from the date the referral was made.

➔Section 1781. KRS 342.033 is amended to read as follows:

In a claim for benefits, no party may introduce direct testimony from more than two (2) physicians without prior consent from the administrative law judge. The motion requesting additional testimony shall clearly demonstrate the need for such additional testimony. A party may introduce direct testimony from a physician through a written medical report. The report shall become a part of the evidentiary record, subject to the right of an adverse party to object to the admissibility of the report and to cross-examine the reporting physician. The commissioner~~executive director~~ shall promulgate administrative regulations prescribing the format and content of written medical reports.

➔Section 1782. KRS 342.035 is amended to read as follows:

(1) Periodically, the commissioner~~executive director~~ shall promulgate administrative regulations to adopt a schedule of fees for the purpose of ensuring that all fees,

1 charges, and reimbursements under KRS 342.020 and this section shall be fair,  
 2 current, and reasonable and shall be limited to such charges as are fair, current, and  
 3 reasonable for similar treatment of injured persons in the same community for like  
 4 services, where treatment is paid for by general health insurers. In determining what  
 5 fees are reasonable, the commissioner~~executive-director~~ may also consider the  
 6 increased security of payment afforded by this chapter. On or before November 1,  
 7 1994, and on July 1 every two (2) years thereafter, the schedule of fees contained in  
 8 administrative regulations promulgated pursuant to this section shall be reviewed  
 9 and updated, if appropriate. Within ten (10) days of April 4, 1994, the  
 10 commissioner~~executive-director~~ shall execute a contract with an appropriately  
 11 qualified consultant pursuant to which each of the following elements within the  
 12 workers' compensation system are evaluated; the methods of health care delivery;  
 13 quality assurance and utilization mechanisms; type, frequency, and intensity of  
 14 services; risk management programs; and the schedule of fees contained in  
 15 administrative regulation. The consultant shall present recommendations based on  
 16 its review to the commissioner~~executive-director~~ not later than sixty (60) days  
 17 following execution of the contract. The commissioner~~executive-director~~ shall  
 18 consider these recommendations and, not later than thirty (30) days after their  
 19 receipt, promulgate a regulation which shall be effective on an emergency basis, to  
 20 effect a twenty-five percent (25%) reduction in the total medical costs within the  
 21 program.

- 22 (2) No provider of medical services or treatment required by this chapter, its agent,  
 23 servant, employee, assignee, employer, or independent contractor acting on behalf  
 24 of any medical provider, shall knowingly collect, attempt to collect, coerce, or  
 25 attempt to coerce, directly or indirectly, the payment of any charge, for services  
 26 covered by a workers' compensation insurance plan for the treatment of a work-  
 27 related injury or occupational disease, in excess of that provided by a schedule of

1 fees, or cause the credit of any employee to be impaired by reason of the employee's  
 2 failure or refusal to pay the excess charge. In addition to the penalty imposed in  
 3 KRS 342.990 for violations of this subsection, any individual who sustains damages  
 4 by any act in violation of the provisions of this subsection shall have a civil cause of  
 5 action in Circuit Court to enjoin further violations and to recover the actual  
 6 damages sustained by the individual, together with the costs of the lawsuit,  
 7 including a reasonable attorney's fee.

8 (3) Where these requirements are furnished by a public hospital or other institution,  
 9 payment thereof shall be made to the proper authorities conducting it. No  
 10 compensation shall be payable for the death or disability of an employee if his or  
 11 her death is caused, or if and insofar as his disability is aggravated, caused, or  
 12 continued, by an unreasonable failure to submit to or follow any competent surgical  
 13 treatment or medical aid or advice.

14 (4) The commissioner~~[executive-director]~~ shall, by December 1, 1994, promulgate  
 15 administrative regulations to adopt a schedule of fees for the purpose of regulating  
 16 charges by medical providers and other health care professionals for testimony  
 17 presented and medical reports furnished in the litigation of a claim by an injured  
 18 employee against the employer. The workers' compensation medical fee schedule  
 19 for physicians, 803 KAR 25:089, having an effective date of February 9, 1995, shall  
 20 remain in effect until July 1, 1996, or until the effective date of any amendments  
 21 promulgated by the commissioner~~[executive-director]~~, whichever occurs first, it  
 22 being determined that this administrative regulation is within the statutory grant of  
 23 authority, meets legislative intent, and is not in conflict with the provisions of this  
 24 chapter. The medical fee schedule and amendments shall be fair, current, and  
 25 reasonable and otherwise comply with this section.

26 (5) (a) To ensure compliance with subsections (1) and (4) of this section, the  
 27 commissioner~~[executive-director]~~ shall promulgate administrative regulations

1 by December 31, 1994, which require each insurance carrier, self-insured  
 2 group, and self-insured employer to certify to the commissioner~~executive~~  
 3 ~~director~~ the program or plan it has adopted to ensure compliance.

4 (b) In addition, the commissioner~~executive director~~ shall periodically have an  
 5 independent audit conducted by a qualified independent person, firm,  
 6 company, or other entity hired by the commissioner~~executive director~~, in  
 7 accordance with the personal service contract provisions contained in KRS  
 8 45A.690 to 45A.725, to ensure that the requirements of subsection (1) of this  
 9 section are being met. The independent person, firm, company, or other entity  
 10 selected by the commissioner~~executive director~~ to conduct the audit shall  
 11 protect the confidentiality of any information it receives during the audit, shall  
 12 divulge information received during the audit only to the  
 13 commissioner~~executive director~~, and shall use the information for no other  
 14 purpose than the audit required by this paragraph.

15 (c) The commissioner~~executive director~~ shall promulgate administrative  
 16 regulations governing medical provider utilization review activities conducted  
 17 by an insurance carrier, self-insured group, or self-insured employer pursuant  
 18 to this chapter.

19 (d) Periodically, or upon request, the commissioner~~executive director~~ shall  
 20 report to the Interim Joint Committee on Labor and Industry of the Legislative  
 21 Research Commission or to the corresponding standing committees of the  
 22 General Assembly, as appropriate, the degree of compliance or lack of  
 23 compliance with the provisions of this section and make recommendations  
 24 thereon.

25 (e) The cost of implementing and carrying out the requirements of this subsection  
 26 shall be paid from funds collected pursuant to KRS 342.122.

27 (6) The commissioner~~executive director~~ may promulgate administrative regulations



1 incorporating managed care or other concepts intended to reduce costs or to speed  
 2 the delivery or payment of medical services to employees receiving medical and  
 3 related benefits under this chapter.

4 (7) For purposes of this chapter, any medical provider shall charge only its customary  
 5 fee for photocopying requested documents. However, in no event shall a  
 6 photocopying fee of a medical provider or photocopying service exceed fifty cents  
 7 (\$0.50) per page. In addition, there shall be no charge for reviewing any records of a  
 8 medical provider, during regular business hours, by any party who is authorized to  
 9 review the records and who requests a review pursuant to this chapter.

10 (8) (a) The commissioner~~executive director~~ shall develop or adopt practice  
 11 parameters or guidelines for clinical practice for use by medical providers  
 12 under this chapter. The commissioner~~executive director~~ may adopt any  
 13 parameters for clinical practice as developed and updated by the federal  
 14 Agency for Health Care Policy Research, or the commissioner~~executive~~  
 15 ~~director~~ may adopt other parameters for clinical practice which are developed  
 16 by qualified bodies, as determined by the commissioner~~executive director~~,  
 17 with periodic updating based on data collected during the application of the  
 18 parameters.

19 (b) Any provider of medical services under this chapter who has followed the  
 20 practice parameters or guidelines developed or adopted pursuant to this  
 21 subsection shall be presumed to have met the appropriate legal standard of  
 22 care in medical malpractice cases regardless of any unanticipated  
 23 complication that may thereafter develop or be discovered.

24 (9) (a) Notwithstanding any other provision of law to the contrary, the medical fee  
 25 schedule adopted under subsection (4) of this section shall require all worker's  
 26 compensation insurance carriers, worker's compensation self-insured groups,  
 27 and worker's compensation self-insured employers to provide coverage and

1 payment for surgical first assisting services to registered nurse first assistants  
2 as defined in KRS 216B.015.

- 3 (b) The provisions of this subsection apply only if reimbursement for an assisting  
4 physician would be covered and a registered nurse first assistant who  
5 performed the services is used as a substitute for the assisting physician. The  
6 reimbursement shall be made directly to the registered nurse first assistant if  
7 the claim is submitted by a registered nurse first assistant who is not an  
8 employee of the hospital or the surgeon performing the services.

9 ➔Section 1783. KRS 342.038 is amended to read as follows:

- 10 (1) Every employer subject to this chapter shall keep a record of all injuries, fatal or  
11 otherwise, received by his employees in the course of their employment. Within one  
12 (1) week after the occurrence and knowledge, as provided in KRS 342.185 to  
13 342.200, of an injury to an employee causing his absence from work for more than  
14 one (1) day, a report thereof shall be made to the department~~[office]~~ in the manner  
15 directed by the commissioner~~[executive—director]~~ through administrative  
16 regulations. An employer's insurance carrier or other party responsible for the  
17 payment of workers' compensation benefits shall be responsible for making the  
18 report to the Department~~[Office]~~ of Workers' Claims within one week of receiving  
19 the notification referred to in subsection (3) of this section.
- 20 (2) The report shall contain the name, nature, and location of the business of the  
21 employer and name, age, sex, wages, and occupation of the injured employee, and  
22 shall state the date and hour of the accident causing the injury, the nature and cause  
23 of the injury, and any other information required by the commissioner~~[executive  
24 director]~~.
- 25 (3) Every employer subject to this chapter shall report to its~~[his]~~ workers' compensation  
26 insurance carrier or the party responsible for the payment of workers' compensation  
27 benefits any work-related injury or disease or alleged work-related injury or disease

1 within three (3) working days of receiving notification of the incident or alleged  
2 incident.

3 (4) Every employer or insurer subject to this chapter shall file additional reports  
4 covering specifically voluntary payments and settlements, and any other reports  
5 required by the commissioner~~executive director~~ by administrative regulation for  
6 the determination of the promptness of voluntary payment and validity and fairness  
7 of agreements. In addition, the commissioner~~executive director~~ may require  
8 additional information as may be necessary to comply with a federal statute or  
9 regulation or any state statute.

10 (5) Upon the termination of the disability of the injured employee, or if the disability  
11 extends beyond a period of sixty (60) days, then also at the expiration of that period,  
12 the employer shall make a supplementary report to the commissioner~~executive~~  
13 ~~director~~ on blanks procured from the department~~office~~ for the purpose.

14 ➔Section 1784. KRS 342.039 is amended to read as follows:

15 Beginning on January 1, 1995, and pursuant to administrative regulations promulgated  
16 under KRS Chapter 13A by the commissioner~~executive director~~, each insurance  
17 company writing workers' compensation insurance policies in the Commonwealth, every  
18 self-insured group, and each employer carrying its own risk shall file in the manner  
19 directed by the commissioner~~executive director~~, detailed claim information contained  
20 in the model regulation developed by the National Association of Insurance  
21 Commissioners (NAIC) in conjunction with the International Association of Industrial  
22 Accident Boards and Commissions (IAIABC).

23 ➔Section 1785. KRS 342.040 is amended to read as follows:

24 (1) Except as provided in KRS 342.020, no income benefits shall be payable for the  
25 first seven (7) days of disability unless disability continues for a period of more than  
26 two (2) weeks, in which case income benefits shall be allowed from the first day of  
27 disability. All income benefits shall be payable on the regular payday of the

1 employer, commencing with the first regular payday after seven (7) days after the  
 2 injury or disability resulting from an occupational disease, with interest at the rate of  
 3 twelve percent (12%) per annum on each installment from the time it is due until  
 4 paid, except that if the administrative law judge determines that a denial, delay, or  
 5 termination in the payment of income benefits was without reasonable foundation,  
 6 the rate of interest shall be eighteen percent (18%) per annum. In no event shall  
 7 income benefits be instituted later than the fifteenth day after the employer has  
 8 knowledge of the disability or death. Income benefits shall be due and payable not  
 9 less often than semimonthly. If the employer's insurance carrier or other party  
 10 responsible for the payment of workers' compensation benefits should terminate or  
 11 fail to make payments when due, that party shall notify the commissioner~~executive~~  
 12 ~~director~~ of the termination or failure to make payments and the  
 13 commissioner~~executive director~~ shall, in writing, advise the employee or known  
 14 dependent of right to prosecute a claim under this chapter.

15 (2) If overdue temporary total disability income benefits are recovered in a proceeding  
 16 brought under this chapter by an attorney for an employee, or paid by the employer  
 17 after receipt of notice of the attorney's representation, a reasonable attorney's fee for  
 18 these services may be awarded. The award of attorney's fees shall be paid by the  
 19 employer if the administrative law judge determines that the denial or delay was  
 20 without reasonable foundation. No part of the fee for representing the employee in  
 21 connection with the recovery of overdue temporary total disability benefits withheld  
 22 without reasonable foundation shall be charged against or deducted from benefits  
 23 otherwise due the employee.

24 (3) All retraining incentive benefits awarded pursuant to KRS 342.732 shall be payable  
 25 on the regular payday of the employer, commencing with the second regular payday  
 26 after the award of the retraining incentive benefit by the administrative law judge  
 27 becomes final. Retraining incentive benefits shall be due and payable not less often

1 than semimonthly.

2 (4) Upon written request of the employee, all payments of compensation shall be  
3 mailed to the employee at his or her last known address.

4 ➔Section 1786. KRS 342.120 is amended to read as follows:

5 (1) There is created the Division of Workers' Compensation Funds in the  
6 Department~~{Office}~~ of Workplace Standards which shall be responsible for the  
7 administration ~~{and legal representation}~~ of the special fund and the coal workers'  
8 pneumoconiosis fund and the maintenance of records regarding the payment of  
9 claims by these funds. The Division of Workers' Compensation Funds shall be  
10 headed by a director appointed by the secretary of the Labor~~{Environmental and~~  
11 ~~Public Protection}~~ Cabinet, with the prior written approval of the Governor pursuant  
12 to KRS 12.050. The director shall be responsible for overseeing the administration  
13 ~~{and legal representation}~~ of the funds and the maintenance of records regarding the  
14 payment of claims by the funds.

15 (2) The special fund shall have no liability upon any claim in which the injury occurred,  
16 or for cumulative trauma, the disability became manifest, or, for occupational  
17 disease, if the date of injury or last exposure occurred, after December 12, 1996.

18 (3) Where the employer has settled its liability for income benefits and thereafter a  
19 determination has been made of the special fund's liability, the special fund portion  
20 of the benefit rate shall be paid over the maximum period provided for by statute for  
21 that disability, with the period of payment beginning on the date settlement was  
22 approved by an administrative law judge. This provision is remedial and shall apply  
23 to all pending and future claims.

24 ➔Section 1787. KRS 342.122 is amended to read as follows:

25 (1) (a) For calendar year 1997 and for each calendar year thereafter, for the purpose  
26 of funding and prefunding the liabilities of the special fund, financing the  
27 administration and operation of the Kentucky Workers' Compensation

1 Funding Commission, and financing the expenditures for all programs in the  
 2 ~~{Department of }~~Labor Cabinet, except the Division of Employment  
 3 Standards, Apprenticeship and ~~Training and the Office of Labor Management~~  
 4 ~~Relations and }~~ Mediation in the Department of Workplace Standards, as  
 5 reflected in the enacted budget of the Commonwealth and enacted by the  
 6 General Assembly, the funding commission shall impose a special fund  
 7 assessment rate of nine percent (9%) upon the amount of workers'  
 8 compensation premiums received on and after January 1, 1997, through  
 9 December 31, 1997, by every insurance carrier writing workers' compensation  
 10 insurance in the Commonwealth, by every self-insured group operating under  
 11 the provisions of KRS 342.350(4) and Chapter 304, and against the premium,  
 12 as defined in KRS 342.0011, of every employer carrying his or her own risk.

- 13 (b) The funding commission shall, for calendar year 1998 and thereafter, establish  
 14 for the special fund an assessment rate to be assessed against all premium  
 15 received during that calendar year which, when added to the coal severance  
 16 tax appropriated to the special fund in accordance with paragraph (c) of this  
 17 section, shall produce enough revenue to amortize on a level basis the  
 18 unfunded liability of the special fund as of June 30 preceding January 1 of  
 19 each year, for the period remaining until December 31, 2018. The interest rate  
 20 to be used in this calculation shall reflect the funding commission's  
 21 investment experience to date and the current investment policies of the  
 22 commission. This assessment shall be imposed upon the amount of workers'  
 23 compensation premiums received by every insurance carrier writing workers'  
 24 compensation insurance in the Commonwealth, by every self-insured group  
 25 operating under the provisions of KRS 342.350(4) and Chapter 304, and  
 26 against the premium, as defined in KRS 342.0011, of every employer carrying  
 27 its~~his~~ own risk. On or before October 1 of each year, the commission shall

1 notify each insurance carrier writing workers' compensation insurance in the  
2 Commonwealth, every group of self-insured employers, and each employer  
3 carrying ~~its~~<sup>his or her</sup> own risk, of the rates which shall become effective on  
4 January 1 of each year, unless modified by the General Assembly.

5 (c) In addition to the assessment imposed in paragraph (a) or (b) of this  
6 subsection, and notwithstanding and prior to the transfer of funds to the Local  
7 Government Economic Assistance Program under KRS 42.450 to 42.495, the  
8 Kentucky Department of Revenue shall credit nineteen million dollars  
9 (\$19,000,000) in coal severance tax revenues levied under KRS 143.020 to  
10 the benefit reserve fund within the Kentucky Workers' Compensation Funding  
11 Commission each year beginning with fiscal year 1998 and all fiscal years  
12 thereafter. The annual transfer of nineteen million dollars (\$19,000,000) shall  
13 occur in four (4) equal quarterly payments. These transfers shall occur not  
14 later than the last day of each quarter of each calendar year and shall consist of  
15 four (4) equal payments of four million, seven hundred fifty thousand dollars  
16 (\$4,750,000).

17 (d) All assessments imposed by this section shall be paid to the Kentucky  
18 Workers' Compensation Funding Commission and shall be credited to the  
19 benefit reserve fund within the Kentucky Workers' Compensation Funding  
20 Commission.

21 (e) The assessments imposed in this chapter shall be in lieu of all other  
22 assessments or taxes on workers' compensation premiums.

23 (2) These assessments shall be paid quarterly not later than the thirtieth day of the  
24 month following the end of the quarter in which the premium is received. Receipt  
25 shall be considered timely through actual physical receipt or by postmark of the  
26 United States Postal Service. Employers carrying their own risk and employers  
27 defined in KRS 342.630(2) shall pay the annual assessments in four (4) equal

1       quarterly installments.

- 2       (3) The assessments imposed by this section may be collected by the insurance carrier  
3       from ~~its~~his insured. However, the insurance carrier shall not collect from the  
4       employer any amount exceeding the assessments imposed pursuant to this section.  
5       If the insurance carrier collects the assessment from an insured, the assessment shall  
6       be collected at the same time and in the same proportion as the premium is  
7       collected. The assessment for an insurance policy or other evidence of coverage  
8       providing a deductible may be collected in accordance with this chapter on a  
9       premium amount that equates to the premium that would have applied without the  
10      deductible. Each statement from an insurance carrier presented to an insured  
11      reflecting premium and assessment amounts shall clearly identify and distinguish  
12      the amount to be paid for premium and the amount to be paid for assessments. No  
13      insurance carrier shall collect from an insured an amount in excess of the  
14      assessment percentages imposed by this chapter. The assessment for an insurance  
15      policy or other evidence of coverage providing a deductible may be collected in  
16      accordance with this chapter on a premium amount that equates to the premium that  
17      would have applied without the deductible. The percentages imposed by this  
18      chapter for an insurance policy issued by an insurance company shall be those  
19      percentages in effect on the annual effective date of the policy, regardless of the  
20      date that the premium is actually received by the insurance company.
- 21      (4) A self-insured group may elect to report its premiums and to have its assessments  
22      computed in the same manner as insurance companies. This election may not be  
23      rescinded for at least ten (10) years, nor may this election be made a second time for  
24      at least another ten (10) years, except that the board of directors of the funding  
25      commission may, at its discretion, waive the ten (10) year ban on a case-by-case  
26      basis after formal petition has been made to the funding commission by a self-  
27      insured group.



- 1 (5) The funding commission, as part of the collection and auditing of the special fund  
2 assessments required by this section, shall annually require each insurance carrier  
3 and each self-insured group to provide a list of employers which it has insured or  
4 which are members and the amount collected from each employer. Additionally, the  
5 funding commission shall require each entity paying a special fund assessment to  
6 report the SIC code for each employer and the amount of premium collected from  
7 each SIC code. An insurance carrier or self-insured group may require its insureds  
8 or members to furnish the SIC code for each of their employees. However, the  
9 failure of any employer to furnish said codes shall not relieve the insurance carrier  
10 or self-insured group from the obligation to furnish same to the funding  
11 commission. The Office of Employment and Training, Education and Workforce  
12 Development Cabinet, is hereby directed to make available the SIC codes assigned  
13 in its records to specific employers to aid in the reporting and recording of the  
14 special fund assessment data.
- 15 (6) Each self-insured employer, self-insured group, or insurance carrier shall provide  
16 any information and submit any reports the Department of Revenue or the funding  
17 commission may require to effectuate the provisions of this section. In addition, the  
18 funding commission may enter reciprocal agreements with other governmental  
19 agencies for the exchange of information necessary to effectuate the provisions of  
20 this section.
- 21 (7) The special fund shall be required to maintain a central claim registry of all claims  
22 to which it is named a party, giving each such claim a unique claim number and  
23 thereafter recording the status of each claim on a current basis. The registry shall be  
24 established by January 26, 1988, for all claims on which payments were made since  
25 July 1, 1986, or which were pending adjudication since July 1, 1986, by audit of all  
26 claim files in the possession of the special fund.
- 27 (8) The fund heretofore designated as the subsequent claim fund is abolished, and there

1 is substituted therefor the special fund as set out by this section, and all moneys and  
 2 properties owned by the subsequent claim fund are transferred to the special fund.

3 (9) Notwithstanding any other provisions of this section or this chapter to the contrary,  
 4 the total amount of funds collected pursuant to the assessment rates adopted by the  
 5 funding commission shall not be limited to the provisions of this section.

6 (10) All assessment rates imposed for periods prior to January 1, 1997, under KRS  
 7 342.122 shall forever remain applicable to premiums received on policies with  
 8 effective dates prior to January 1, 1997, by every insurance carrier writing workers'  
 9 compensation insurance in the Commonwealth, by every self-insured group  
 10 operating under the provision of KRS 342.350(4) and Chapter 304, and against the  
 11 premium, as defined in KRS 342.0011, of every employer carrying ~~its~~<sup>his</sup> own risk.

12 ➔Section 1788. KRS 342.1223 is amended to read as follows:

13 (1) The Kentucky Workers' Compensation Funding Commission is created as an  
 14 agency of the Commonwealth for the public purpose of controlling, investing, and  
 15 managing the funds collected pursuant to KRS 342.122.

16 (2) The commission shall:

17 (a) Hold, administer, invest, and reinvest the funds collected pursuant to KRS  
 18 342.122 and its other funds separate and apart from all "state funds" or "public  
 19 funds," as defined in KRS Chapter 446;

20 (b) Act as a fiduciary, as defined in KRS Chapter 386, in exercising its power  
 21 over the funds collected pursuant to KRS 342.122, and may invest association  
 22 funds through one (1) or more banks, trust companies, or other financial  
 23 institutions with offices in Kentucky in good standing with the  
 24 Department~~Office~~ of Financial Institutions, in investments described in  
 25 KRS Chapter 386, except that the funding commission may, at its discretion,  
 26 invest in nondividend-paying equity securities;

27 (c) Report to the General Assembly at each even-numbered-year regular session

- 1 the actuarial soundness and adequacy of the funding mechanism for the  
 2 special fund and other programs supported by the mechanism, including  
 3 detailed information on the investment of funds and yields thereon;
- 4 (d) Recommend to the General Assembly, not later than October 31 of the year  
 5 prior to each even-numbered-year regular legislative session, changes deemed  
 6 necessary in the level of the assessments imposed in this chapter;
- 7 (e) In conjunction with the ~~{Department of}~~Labor Cabinet, submit to the General  
 8 Assembly, not later than October 31 of the year prior to each even-numbered-  
 9 year regular legislative session, a proposed budget for the biennium beginning  
 10 July 1 following the even-numbered-year regular session of the General  
 11 Assembly;
- 12 (f) In conjunction with the ~~{Department of}~~Labor Cabinet, provide to the Interim  
 13 Joint Committee on Appropriations and Revenue an annual budget and  
 14 detailed quarterly financial reports;
- 15 (g) Conduct periodic audits, independently or in cooperation with the  
 16 ~~{Department of}~~Labor Cabinet or the Department of Revenue, of all entities  
 17 subject to the assessments imposed in this chapter; and
- 18 (h) Report monthly to the Committees on Appropriations and Revenue and on  
 19 Labor and Industry its monthly expenditures of restricted agency funds and the  
 20 nature of the expenditures.
- 21 (3) The commission shall have all of the powers necessary or convenient to carry out  
 22 and effectuate the purposes for which it was established, including, but not limited  
 23 to, the power:
- 24 (a) To sue and be sued, complain, or defend, in its name;
- 25 (b) To elect, appoint, or hire officers, agents, and employees, and define their  
 26 duties and fix their compensation within the limits of its budget approved by  
 27 the General Assembly;

- 1 (c) To contract for investment counseling, legal, actuarial, auditing, and other  
 2 professional services in accordance with the provisions relating to personal  
 3 service contracts contained in KRS Chapter 45A;
- 4 (d) To appoint, hire, and contract with banks, trust companies, and other entities  
 5 to serve as depositories and custodians of its investment receipts and other  
 6 funds;
- 7 (e) To take any and all other actions consistent with the purposes of the  
 8 commission and the provisions of this chapter; and
- 9 (f) To make and promulgate administrative regulations.
- 10 (4) Notwithstanding the provisions of this chapter to the contrary, the Kentucky  
 11 Workers' Compensation Funding Commission shall utilize the investment expertise  
 12 and advice of the Office of Financial Management in the Office of the Controller  
 13 within the Finance and Administration Cabinet rather than entering into a  
 14 consulting contract for investment counseling. The fees charged by financial  
 15 institutions for managing the investments of the funds of the funding commission  
 16 shall be paid from the investment earnings of the funds.
- 17 (5) The commission shall be attached to the ~~{Department of}~~ Labor Cabinet for  
 18 administrative purposes only.
- 19 ➔Section 1789. KRS 342.1224 is amended to read as follows:
- 20 (1) The commission shall be governed by a board of directors consisting of seven (7)  
 21 members. The seven (7) members shall include the secretary of the  
 22 Labor~~[Environmental and Public Protection]~~ Cabinet or a designee, the secretary of  
 23 the Cabinet for Economic Development or a designee, the secretary of the Finance  
 24 and Administration Cabinet or a designee, and four (4) members who shall be  
 25 appointed by the Governor.
- 26 (2) The four (4) appointed members shall include:
- 27 (a) One (1) member, selected from a list of three (3) submitted by the secretary of

1 the Labor~~[Environmental and Public Protection]~~ Cabinet, who shall represent  
2 labor;

3 (b) One (1) member, selected from a list of three (3) submitted by the secretary  
4 for economic development, who shall represent employers; provided,  
5 however, that these three (3) members shall represent employers who  
6 purchase workers' compensation coverage for their employees from insurance  
7 companies writing workers' compensation insurance in the Commonwealth;

8 (c) One (1) member, selected from a list of three (3) submitted by the insurance  
9 advisory organization having jurisdiction over Kentucky, who shall represent  
10 insurance companies writing workers' compensation insurance in the  
11 Commonwealth; and

12 (d) One (1) member, selected from a list of three (3) submitted by the associations  
13 representing self-insured employers in the Commonwealth.

14 (3) The members of the board of directors shall serve a term of four (4) years, except  
15 that the initial terms of the members shall be staggered as follows:

16 (a) The initial member appointed by the Governor to represent labor shall serve a  
17 term of one (1) year. Thereafter, such member shall serve a term of four (4)  
18 years;

19 (b) The initial member appointed by the Governor to represent employers shall  
20 serve a term of two (2) years. Thereafter, such member shall serve a term of  
21 four (4) years;

22 (c) The initial member appointed by the Governor to represent insurance  
23 companies shall serve a term of four (4) years. Thereafter, such member shall  
24 serve a term of four (4) years; and

25 (d) The initial member appointed by the Governor to represent self-insured  
26 employers shall serve a term of three (3) years. Thereafter, such member shall  
27 serve a term of four (4) years.

- 1 (4) The board of directors shall annually elect from among its members a chairman, a  
 2 vice chairman, and a secretary-treasurer. The board of directors may also elect or  
 3 appoint, and prescribe the duties of, other officers as the board of directors deems  
 4 necessary or advisable.
- 5 (5) The board of directors shall appoint an executive director to administer, manage,  
 6 and direct the affairs and business of the commission, and other staff persons to  
 7 carry out the affairs and business of the commission, subject in each instance to the  
 8 policies, control, and directions of the board of directors. The board of directors  
 9 shall fix the compensation of all such persons and shall pay such compensation out  
 10 of the funds of the commission.
- 11 (6) Notwithstanding any other law, the Governor, pursuant to an executive order, may  
 12 cause the employees of the commission to be eligible to participate in the Kentucky  
 13 Retirement System and the Kentucky Public Employees Deferred Compensation  
 14 System.
- 15 (7) A majority of the board of directors of the commission shall constitute a quorum for  
 16 the purposes of conducting its business and exercising its powers and for all other  
 17 purposes. The majority shall be determined by excluding any existing vacancies  
 18 from the total number of directors.
- 19 (8) The board of directors of the Kentucky Workers' Compensation Funding  
 20 Commission are hereby determined to be officers and agents of the Commonwealth  
 21 of Kentucky and, as such, shall enjoy the same immunities from suit for the  
 22 performance of their official acts as do other officers of the Commonwealth of  
 23 Kentucky.

24 ➔Section 1790. KRS 342.1228 is amended to read as follows:

25 The Kentucky Workers' Compensation Funding Commission shall not be subject to the  
 26 Governor's power of reorganization under KRS Chapter 12, including attachment or  
 27 transfer to another organizational unit or administrative body other than the [Department

1 of Labor Cabinet. The Governor may, however, recommend changes in the organization  
 2 of the commission to the General Assembly at any regular or special session of the  
 3 General Assembly.

4 ➔ Section 1791. KRS 342.1242 is amended to read as follows:

5 (1) There is created the Kentucky coal workers' pneumoconiosis fund which shall have  
 6 one-half (1/2) of the liability for income benefits, including retraining benefits,  
 7 payable for claims brought under KRS 342.732 for last exposure incurred on or  
 8 after December 12, 1996. Income benefit payments by the Kentucky coal workers'  
 9 pneumoconiosis fund shall be made contemporaneous with the payments made by  
 10 the employer, except that the employer shall make all payments due under a final  
 11 award or approved settlement until the liability of the Kentucky coal workers'  
 12 pneumoconiosis fund is established under subsection (2) of this section and the coal  
 13 workers' pneumoconiosis fund shall reimburse the employer for such payments to  
 14 the extent of its liability.

15 (2) The employer shall defend any claim brought under KRS 342.732 and upon  
 16 conclusion shall seek participation in payment of the final award or settlement by  
 17 the Kentucky coal workers' pneumoconiosis fund by making written request upon  
 18 the director in the manner prescribed by administrative regulation to be promulgated  
 19 by the commissioner~~[executive director]~~ of the Department~~[Office]~~ of Workers'  
 20 Claims.

21 (3) (a) For the purpose of funding and prefunding the liabilities of the Kentucky coal  
 22 workers' pneumoconiosis fund and financing the administration and operation  
 23 of the Kentucky coal workers' pneumoconiosis fund, as reflected in the budget  
 24 of the Commonwealth enacted by the General Assembly, a Kentucky coal  
 25 workers' pneumoconiosis fund assessment at the rate of three percent (3%) is  
 26 hereby imposed upon the amount of workers' compensation premiums  
 27 received on and after January 1, 1997, through December 31, 1997, by every

1 insurance carrier writing workers' compensation insurance in the  
2 Commonwealth and by every self-insured group operating under the  
3 provisions of KRS 342.350(4) and Chapter 304, from employers engaged in  
4 the severance or processing of coal. Likewise, on and after January 1, 1997,  
5 through December 31, 1997, an assessment at the rate of three percent (3%) of  
6 premium shall be paid by every employer engaged in the severance or  
7 processing of coal who is carrying his or her own risk.

8 (b) In addition to the assessment imposed in paragraph (a) of this subsection, an  
9 additional Kentucky coal workers' pneumoconiosis fund assessment at the rate  
10 of two and one-half cents (\$0.025) per ton is hereby imposed upon the total  
11 annual amount of tons of coal severed on or after January 1, 1997, through  
12 December 31, 1997, by every entity engaged in the severance of coal as  
13 required pursuant to KRS Chapter 143.

14 (c) As of June 30, 2006, and each year thereafter, the funding commission shall  
15 determine the assets of the fund and the claim and administrative expense  
16 liability incurred by the fund for all previous years and shall establish the rates  
17 under the provisions of paragraphs (a) and (b) of this subsection necessary as  
18 of January 1 of the next year to fully fund and prefund all claim liabilities and  
19 administrative expenses through December 31 of the next year of operations.  
20 The assessment rate authorized by this section for premiums received and tons  
21 of coal severed shall be set so as to receive fifty percent (50%) of the needed  
22 revenue from each assessment. Notice of any rate changes shall be provided  
23 no later than October 1 of the year preceding the rate change.

24 (4) All assessments imposed by this section shall be paid to the Kentucky Workers'  
25 Compensation Funding Commission and shall be credited to a separate account  
26 within the benefit reserve fund within the Kentucky Workers' Compensation  
27 Funding Commission. In addition, the powers and responsibilities of the Kentucky



1 Workers' Compensation Funding Commission including its fiduciary duties and  
2 responsibilities relating to assessments collected for the special fund pursuant to  
3 KRS 342.122, 342.1222, 342.1223, 342.1226, 342.1229, and 342.1231 shall apply  
4 to assessments collected for the Kentucky coal workers' pneumoconiosis fund  
5 created pursuant to this section. Each entity subject to assessments for the Kentucky  
6 coal workers' pneumoconiosis fund shall provide any and all information requested  
7 by the Kentucky Workers' Compensation Funding Commission necessary to carry  
8 out its powers and responsibilities relating thereto.

9 (5) These assessments shall be paid quarterly not later than the thirtieth day of the  
10 month following the end of the quarter in which the premium is received or the coal  
11 is processed or severed. Receipt shall be considered timely through actual physical  
12 receipt or by postmark by the United States Postal Service. Employers carrying their  
13 own risk and employers defined in KRS 342.630(2) shall pay the annual  
14 assessments in four (4) equal quarterly installments. Penalty and interest penalties  
15 imposed pursuant to KRS 342.1221 and the authority of the Kentucky Workers'  
16 Compensation Funding Commission to waive part or all of the penalty shall apply  
17 to assessments for the Kentucky coal workers' pneumoconiosis fund in the same  
18 manner and amount as they are imposed on assessments for the special fund under  
19 KRS 342.122.

20 (6) Notwithstanding any other provisions of this section or this chapter to the contrary,  
21 the total amount of funds collected pursuant to the assessment rates adopted by the  
22 funding commission shall not be limited to the provisions of this section.

23 (7) Claims for benefits by reason of the development of coal workers' pneumoconiosis  
24 shall be maintained pursuant to KRS 342.732, and the Kentucky coal workers'  
25 pneumoconiosis fund shall be liable for payment of a part of the liability only for  
26 employees of employers engaged in the severance or processing of coal as defined  
27 in KRS 342.0011(23)(a) and (b).

1        ➔Section 1792. KRS 342.140 is amended to read as follows:

2        The average weekly wage of the injured employee at the time of the injury or last  
3        injurious exposure shall be determined as follows:

4        (1) If at the time of the injury which resulted in death or disability or the last date of  
5        injurious exposure preceding death or disability from an occupational disease:

6            (a) The wages were fixed by the week, the amount so fixed shall be the average  
7            weekly wage;

8            (b) The wages were fixed by the month, the average weekly wage shall be the  
9            monthly wage so fixed multiplied by twelve (12) and divided by fifty-two  
10           (52);

11           (c) The wages were fixed by the year, the average weekly wage shall be the yearly  
12           wage so fixed divided by fifty-two (52);

13           (d) The wages were fixed by the day, hour, or by the output of the employee, the  
14           average weekly wage shall be the wage most favorable to the employee  
15           computed by dividing by thirteen (13) the wages (not including overtime or  
16           premium pay) of said employee earned in the employ of the employer in the  
17           first, second, third, or fourth period of thirteen (13) consecutive calendar  
18           weeks in the fifty-two (52) weeks immediately preceding the injury.

19           (e) The employee had been in the employ of the employer less than thirteen (13)  
20           calendar weeks immediately preceding the injury, his or her average weekly  
21           wage shall be computed under paragraph (d), taking the wages (not including  
22           overtime or premium pay) for that purpose to be the amount he or she would  
23           have earned had he or she been so employed by the employer the full thirteen  
24           (13) calendar weeks immediately preceding the injury and had worked, when  
25           work was available to other employees in a similar occupation.

26           (f) The hourly wage has not been fixed or cannot be ascertained, the wage for the  
27           purpose of calculating compensation shall be taken to be the usual wage for

- 1 similar services where the services are rendered by paid employees.
- 2 (2) In occupations which are exclusively seasonal and therefore cannot be carried on  
3 throughout the year, the average weekly wage shall be taken to be one-fiftieth (1/50)  
4 of the total wages which the employee has earned from all occupations during the  
5 twelve (12) calendar months immediately preceding the injury.
- 6 (3) In the case of volunteer firemen, police, and emergency management agency  
7 members or trainees, the income benefits shall be based on the average weekly  
8 wage in their regular employment.
- 9 (4) If the employee was a minor, apprentice, or trainee when injured, and it is  
10 established that under normal conditions his or her wages should be expected to  
11 increase during the period of disability, that fact may be considered in computing  
12 his or her average weekly wage.
- 13 (5) When the employee is working under concurrent contracts with two (2) or more  
14 employers and the defendant employer has knowledge of the employment prior to  
15 the injury, his or her wages from all the employers shall be considered as if earned  
16 from the employer liable for compensation.
- 17 (6) The term "wages" as used in this section and KRS 342.143 means, in addition to  
18 money payments for services rendered, the reasonable value of board, rent, housing,  
19 lodging, and fuel or similar advantage received from the employer, and gratuities  
20 received in the course of employment from others than the employer to the extent  
21 the gratuities are reported for income tax purposes.
- 22 (7) The commissioner~~[executive director]~~ shall, from time to time, based upon the best  
23 available information, determine by administrative regulation industries which  
24 ordinarily do not have a full working day for five (5) days in every week. In those  
25 industries, compensation shall be computed at the average weekly wage earned by  
26 the employee at the time of injury reckoning wages as earned while working full  
27 time. "At full time" as used in this subsection means a full working day for five (5)

1 working days in every week regardless of whether the injured employee actually  
2 worked all or part of the time.

3 ➔Section 1793. KRS 342.143 is amended to read as follows:

4 For the purposes of this chapter, the average weekly wage of the state shall be determined  
5 by the commissioner~~[executive director]~~ as follows: On or before September 1 of each  
6 year, the total wages reported by subject employers under the Kentucky Unemployment  
7 Insurance Law for the preceding calendar year shall be divided by the average monthly  
8 number of insured workers (determined by dividing the total number of insured workers  
9 reported for the preceding year by twelve (12)). The average annual wage thus obtained  
10 shall be divided by fifty-two (52) and the average weekly wage thus determined rounded  
11 to the nearest cent. The average weekly wage shall be certified to the  
12 commissioner~~[executive director]~~ by the Education and Workforce Development Cabinet  
13 in a manner prescribed by the commissioner~~[executive director]~~ by administrative  
14 regulation. The average weekly wage as so determined shall be applicable for the full  
15 period during which income or death benefits are payable, when the date of occurrence of  
16 injury or of disability in the case of disease, or of death, falls within the calendar year  
17 commencing January 1 following the September 1 determination. Whenever a change in  
18 the average weekly wage of the state is of such amount that the minimum weekly income  
19 benefits for total disability or for death are increased or decreased by one dollar (\$1) or  
20 more, or the maximum weekly income benefits for total disability or for death are  
21 increased or decreased by two dollars (\$2) or more, computed in each case and rounded to  
22 the nearest dollar, an adjustment in those minimums or maximums which are affected in  
23 the requisite amount by the change in the average weekly wage of the state shall be made  
24 which will reflect this increase or decrease, but no change in such limitations shall  
25 otherwise be made. Notwithstanding the provisions of this section, KRS 342.140 and  
26 342.740, or any other provisions of this chapter to the contrary, the average weekly wage  
27 for calendar years 1995 and 1996 shall be determined to be no higher than the average

1 weekly wage determined by the commissioner~~[executive director]~~ to be in effect in the  
 2 calendar year of 1994. If the average weekly wage calculated by the  
 3 commissioner~~[executive director]~~ is determined to be lower than the 1994 calendar year  
 4 wage, the average weekly wage may be lowered as provided by this section. Beginning in  
 5 calendar year 1997 and annually thereafter, the average weekly wage shall be calculated  
 6 based upon the state average weekly wage in effect two (2) years prior to that calculation.

7 ➔Section 1794. KRS 342.165 is amended to read as follows:

8 (1) If an accident is caused in any degree by the intentional failure of the employer to  
 9 comply with any specific statute or lawful administrative regulation made  
 10 thereunder, communicated to the employer and relative to installation or  
 11 maintenance of safety appliances or methods, the compensation for which the  
 12 employer would otherwise have been liable under this chapter shall be increased  
 13 thirty percent (30%) in the amount of each payment. If an accident is caused in any  
 14 degree by the intentional failure of the employee to use any safety appliance  
 15 furnished by the employer or to obey any lawful and reasonable order or  
 16 administrative regulation of the commissioner~~[executive director]~~ or the employer  
 17 for the safety of employees or the public, the compensation for which the employer  
 18 would otherwise have been liable under this chapter[,], shall be decreased fifteen  
 19 percent (15%) in the amount of each payment.

20 (2) No compensation shall be payable for work-related injuries if the employee at the  
 21 time of entering the employment of the employer by whom compensation would  
 22 otherwise be payable falsely represents, in writing, his or her physical condition or  
 23 medical history, if all of the following factors are present:

24 (a) The employee has knowingly and willfully made a false representation as to  
 25 his or her physical condition or medical history;

26 (b) The employer has relied upon the false representation, and this reliance was a  
 27 substantial factor in the hiring; and

(c) There is a causal connection between the false representation and the injury for which compensation has been claimed.

➔Section 1795. KRS 342.185 is amended to read as follows:

(1) Except as provided in subsection (2) of this section, no proceeding under this chapter for compensation for an injury or death shall be maintained unless a notice of the accident shall have been given to the employer as soon as practicable after the happening thereof and unless an application for adjustment of claim for compensation with respect to the injury shall have been made with the department~~[office]~~ within two (2) years after the date of the accident, or in case of death, within two (2) years after the death, whether or not a claim has been made by the employee himself or herself for compensation. The notice and the claim may be given or made by any person claiming to be entitled to compensation or by someone in his or her behalf. If payments of income benefits have been made, the filing of an application for adjustment of claim with the department~~[office]~~ within the period shall not be required, but shall become requisite within two (2) years following the suspension of payments or within two (2) years of the date of the accident, whichever is later.

(2) The right to compensation under this chapter resulting from work-related exposure to the human immunodeficiency virus shall be barred unless notice of the injurious exposure is given in accordance with subsection (1) of this section and unless an application for adjustment of claim for compensation shall have been made with the commissioner~~[executive-director]~~ within five (5) years after the injurious exposure to the virus.

➔Section 1796. KRS 342.205 is amended to read as follows:

(1) After an injury and so long as compensation is claimed, the employee, if requested by a party or by the administrative law judge, shall submit himself or herself to examination, at a reasonable time and place, to a duly-qualified physician or

1 surgeon designated and paid by the requesting party. The employee shall have the  
 2 right to have a duly-qualified physician or surgeon designated and paid by himself  
 3 or herself present at the examination, but this right shall not deny the requesting  
 4 party's physician or surgeon the right to examine the injured employee at all  
 5 reasonable times and under all reasonable conditions.

6 (2) The party requesting an examination pursuant to subsection (1) of this section shall  
 7 make arrangements to provide all the cost of the examination. The requesting party  
 8 shall also prepay the cost of transportation of the employee to and from the  
 9 examination if public transportation is utilized. If the employee uses his or her own  
 10 vehicle to travel to and from the examination, the requesting party shall prepay the  
 11 employee at the state mileage rate. The requesting party shall also reimburse the  
 12 employee for the cost of meals, lodging, parking, and toll charges upon proof of  
 13 same by written voucher. The amounts prepaid or reimbursed by the requesting  
 14 party, as required by this subsection, shall be the same as, and in accordance with,  
 15 state travel administrative regulations and standards promulgated and established  
 16 pursuant to KRS Chapter 45.

17 (3) If an employee refuses to submit himself or herself to or in any way obstructs the  
 18 examination, his or her right to take or prosecute any proceedings under this  
 19 chapter shall be suspended until the refusal or obstruction ceases. No compensation  
 20 shall be payable for the period during which the refusal or obstruction continues.

21 (4) Any employee receiving benefits under this chapter may be required, upon request  
 22 of any party, to furnish a sworn affirmed statement of earnings and other supporting  
 23 information the administrative law judge may require.

24 (5) The ~~cabinet~~[department] shall supply forms for the report.

25 ➔Section 1797. KRS 342.213 is amended to read as follows:

26 (1) The Governor shall make all appointments to the board, and appoint the  
 27 administrative law judges and the commissioner[~~executive director~~] of the

1        **Department**~~[Office]~~ of Workers' Claims, subject to the consent of the Senate in  
2        accordance with KRS 11.160, and in accordance with this section, KRS 342.215,  
3        342.228, and 342.230 by choosing from names presented to him **or her** by the  
4        Workers' Compensation Nominating Commission.

5        (2) The Workers' Compensation Nominating Commission shall consist of seven (7)  
6        members appointed by the Governor as follows:

7        (a) Two (2) members shall be attorneys experienced in the practice of workers'  
8        compensation, one (1) of whom customarily represents claimants, and one (1)  
9        of whom customarily represents employers. Both shall serve terms of two (2)  
10       years, but their successors shall be appointed to terms of four (4) years.

11       (b) 1. One (1) member of the political party having the largest number of  
12       registered voters and one (1) member of the political party having the  
13       second largest number of registered voters shall serve a term of three (3)  
14       years; and

15       2. Two (2) members of the political party having the largest number of  
16       registered voters and one (1) member of the political party having the  
17       second largest number of registered voters shall serve a term of four (4)  
18       years.

19       3. Thereafter, as each term expires, the vacancy so created shall be filled by  
20       an appointee from the same political party for a term of four (4) years.

21       (c) Appointments to fill the unexpired term of a member shall be for the  
22       remainder of the term.

23       (d) The members shall annually select a chairman of the nominating commission.

24       (3) Notwithstanding the provisions of subsection (2) of this section, at least three (3)  
25       members of the Workers' Compensation Nominating Commission shall be  
26       individuals who directly derive no earned income from the workers' compensation  
27       program. In order to satisfy the requirement of this subsection, the Governor may



1 remove any existing member of the Workers' Compensation Nominating  
2 Commission and replace that member with an individual who does not derive  
3 earned income from the workers' compensation program. On or before March 1,  
4 1997, the Governor shall submit to the Senate a list of the members of the  
5 commission identifying the positions they fill and the terms they shall serve in  
6 accordance with the provisions of this section.

7 (4) The commissioner~~{executive-director}~~ shall monitor the workload of the  
8 administrative law judges and, whenever a vacancy occurs, determine whether  
9 filling the position is necessary to expeditious resolution of claims brought under  
10 this chapter. One hundred twenty (120) days prior to the expiration of the terms of  
11 the administrative law judges, and when a vacancy occurs under other  
12 circumstances, the commissioner~~{executive-director}~~ shall certify to the Workers'  
13 Compensation Nominating Commission that filling the position is necessary and the  
14 Workers' Compensation Nominating Commission shall act to fill only such  
15 positions as have been certified as necessary by the commissioner~~{executive~~  
16 ~~director}~~.

17 (5) (a) The Workers' Compensation Nominating Commission shall consult with the  
18 commissioner~~{executive-director}~~, chief administrative law judge, and a  
19 member of the Workers' Compensation Board as to the performance in office  
20 of the administrative law judges. The Workers' Compensation Nominating  
21 Commission may recommend retention of any sitting administrative law  
22 judge, or present to the Governor the names of three (3) qualified individuals  
23 nominated for the position. The Workers' Compensation Nominating  
24 Commission shall report its recommendation for retention to the Governor no  
25 later than thirty (30) days after receipt from the commissioner~~{executive~~  
26 ~~director}~~ of certification of the necessity to fill the position and shall render to  
27 the Governor its list of nominees to fill vacancies within sixty (60) days of

1 receipt of the commissioner's~~executive director's~~ certification. The name of  
 2 an individual who has been rejected by the Governor when recommended for  
 3 retention shall not be presented thereafter as a nominee for the same position.

4 No sitting administrative law judge shall be nominated to fill more than one  
 5 (1) vacancy except for separate vacancies as an administrative law judge.

6 (b) Within thirty (30) days of receipt of the recommendation, the Governor may  
 7 reject recommendations of retention, in which event the Workers'  
 8 Compensation Nominating Commission shall, within thirty (30) days,  
 9 reconvene and present a list of the names of three (3) nominees for each  
 10 position for which a recommendation for retention has been rejected by the  
 11 Governor.

12 (6) The Governor shall appoint the commissioner~~executive director~~ of the  
 13 Department~~Office~~ of Workers' Claims from a list of three (3) names submitted by  
 14 the nominating commission. The list submitted to the Governor shall contain names  
 15 of individuals who meet the qualifications and requirements contained in KRS  
 16 342.228. The commissioner~~executive director~~ shall be subject to Senate  
 17 confirmation in accordance with KRS 11.160.

18 (7) (a) The Governor shall appoint the members of the Workers' Compensation  
 19 Board. The nominating commission shall present to the Governor a list of  
 20 three (3) candidates for appointment to the board no later than thirty (30) days  
 21 prior to the expiration of a board member's term. For the purpose of filling  
 22 vacancies on the board which occur for reasons other than an expiration of  
 23 term, the nominating commission shall present a list of three (3) names to the  
 24 Governor no later than sixty (60) days after a vacancy occurs.

25 (b) If the Governor fails to appoint a member of the board within thirty (30) days  
 26 following receipt of a list of names from the nominating commission, the  
 27 previous appointee may remain in the position until the ninetieth day

1 following the date the nominating commission provided the Governor with its  
2 list of names, at which time he or she shall vacate the position.

- 3 (8) The nominating commission shall meet as often as necessary to perform its  
4 responsibilities, and the members shall be reimbursed from funds collected pursuant  
5 to KRS 342.122 for necessary expenses in the manner and amounts prescribed for  
6 state employees by KRS 45.101 and the administrative regulations promulgated  
7 under the authority of that statute. In addition, each member of the nominating  
8 commission shall be paid at a rate of one hundred dollars (\$100) per day for each  
9 meeting attended, and these expenses shall be financed from funds collected  
10 pursuant to KRS 342.122.

11 ➔Section 1798. KRS 342.215 is amended to read as follows:

- 12 (1) The Workers' Compensation Board is hereby created and established. The board  
13 shall rule on appeals of decisions rendered by administrative law judges under this  
14 chapter. The board shall rule on an appeal of a decision of an administrative law  
15 judge no later than sixty (60) days following the date on which the last appeal brief  
16 was filed.
- 17 (2) The Workers' Compensation Board shall consist of three (3) members appointed by  
18 the Governor. Each member shall hold no other public office and shall devote his or  
19 her full time to the duties of his or her office.
- 20 (3) Of the members of the board appointed under this section, one (1) shall serve a term  
21 that shall expire on January 4, 2002; one (1) shall serve a term that shall expire on  
22 January 4, 2003; and one (1) shall serve a term that shall expire on January 4, 2004,  
23 as designated by the Governor at the time of appointment. Thereafter, each term of a  
24 board member shall run for four (4) years from the date of expiration of the term for  
25 which the member's predecessor was appointed, except that a person appointed to  
26 fill a vacancy prior to the expiration of a term shall be appointed for the remainder  
27 of the term. The Governor shall not appoint a member of the board to fill the

unexpired term of another board member, nor shall the Governor reappoint a member of the board who has been removed from his or her position prior to the expiration of his or her term. The members of the board shall have the qualifications required of appeals court judges, except for residence in a district, and shall receive the same salary and shall be subject to the same standards of conduct.

The Governor shall designate a member of the board to serve as chairman. Any vacancy in the chairmanship shall be filled by the Governor. The Governor may at any time remove any member for cause after furnishing the member[him] with a written copy of the charges against him or her and giving the member[him] a public hearing if he or she requests it.

(4) A decision concurred in by any two (2) of the three (3) members shall constitute a decision of the board.

(5) Members of the Workers' Compensation Board and the administrative law judges shall be members of the Kentucky Employees Retirement System.

(6) The Workers' Compensation Board shall be attached to the Department[Office] of Workers' Claims[the Secretary] in the Labor[Environmental and Public Protection] Cabinet.

➔Section 1799. KRS 342.228 is amended to read as follows:

(1) The Department[Office] of Workers' Claims shall be responsible for administering claims and ensuring compliance with the insurance, self-insurance, and rehabilitation provisions in this chapter. The department[office] shall be administered by a commissioner[an executive director] appointed by the Governor. The Governor shall select the commissioner[executive director] from a list of three (3) names submitted by the Workers' Compensation Nominating Commission created pursuant to KRS 342.213. The commissioner[executive director] appointed by the Governor shall be subject to the consent of the Senate in accordance with KRS 11.160.

1 (2) The commissioner~~{executive-director}~~ shall have demonstrated knowledge and  
 2 experience in the area of workers' compensation, public administration, and  
 3 administrative law.

4 ➔Section 1800. KRS 342.229 is amended to read as follows:

5 (1) The records of the Department~~{Office}~~ of Workers' Claims, to the extent that they  
 6 provide information personally identifying an individual alleging a work-related  
 7 injury or occupational disease, shall not be open to the public but only to parties  
 8 satisfying the commissioner~~{executive-director}~~ of their interest in the records and  
 9 their right to inspect them.

10 (2) This section shall not prohibit or limit the exchange of public records or the sharing  
 11 of information between the Department~~{Office}~~ of Workers' Claims and another  
 12 public agency when the exchange is serving a legitimate governmental need or is  
 13 necessary in the performance of a legitimate government function, including the  
 14 investigation of workers' compensation fraud.

15 ➔Section 1801. KRS 342.230 is amended to read as follows:

16 (1) The commissioner~~{executive-director}~~, within the limits of appropriations therefor  
 17 and except as otherwise specifically provided in this chapter, shall establish and fill  
 18 any positions, including medical services and advice, necessary to carry on the  
 19 department's~~{office's}~~ work. The employees of the Department~~{Office}~~ of Workers'  
 20 Claims, except the commissioner~~{executive-director}~~, administrative law judges,  
 21 and board members, shall be members of the classified service.

22 (2) The commissioner~~{executive-director}~~ of the Department~~{Office}~~ of Workers'  
 23 Claims shall have immediate supervision of the employees of the  
 24 department~~{office}~~, perform duties assigned him or her, and have complete  
 25 authority to carry out all the administrative functions relating to the  
 26 Department~~{Office}~~ of Workers' Claims. The commissioner~~{executive-director}~~  
 27 with the assistance of the board shall train and instruct the administrative law judges

1 on an ongoing basis; assign cases; and monitor the caseloads of the administrative  
 2 law judges and the Workers' Compensation Board to ensure timely disposition of  
 3 cases; keep and be the custodian of the records of the board and the administrative  
 4 law judges; annually report the activities of the board and the administrative law  
 5 judges to the Governor; and devote his or her full time to the duties of his or her  
 6 office. The commissioner~~executive director~~ shall be paid a salary not less than the  
 7 salary of a member of the board.

8 (3) The Governor shall appoint, with the consent of the Senate in accordance with KRS  
 9 11.160 for a term of four (4) years, not more than nineteen (19) administrative law  
 10 judges, each of whom shall be an attorney and shall have five (5) years' experience  
 11 in the Commonwealth in the practice of workers' compensation law or a related  
 12 field, and extensive knowledge of workers' compensation law, and shall be paid the  
 13 same salary as a Circuit Judge. Each administrative law judge may be employed for  
 14 additional terms with the consent of the Senate in accordance with KRS 11.160.  
 15 The Governor, at least thirty (30) days prior to the expiration of a term of an  
 16 administrative law judge, shall provide the name of the individual whom he intends  
 17 to appoint to the position to the chairman of the Senate Labor and Industry  
 18 Committee. These administrative law judges shall conduct hearings, and otherwise  
 19 supervise the presentation of evidence and perform any other duties assigned to  
 20 them by statute and shall render final decisions, orders, or awards. Administrative  
 21 law judges may, in receiving evidence, make rulings affecting the competency,  
 22 relevancy, and materiality of the evidence about to be presented and upon motions  
 23 presented during the taking of evidence as will expedite the preparation of the case.

24 (4) To ensure that the administrative law judges perform their responsibilities  
 25 competently and issue decisions consistent with this chapter, the  
 26 commissioner~~executive director~~ shall, at least twice annually, conduct training  
 27 and education seminars in workers' compensation law; administrative law; and

1 methods and procedures for writing well-reasoned, clear, correct, and concise  
 2 opinions, orders, or awards.

3 (5) The Governor may at any time remove the commissioner~~{executive director}~~ or any  
 4 member of the board. The commissioner~~{executive director}~~ may remove any  
 5 administrative law judge. A member of the board or an administrative law judge  
 6 may be removed for good cause, including~~{-}~~ violation of the code of judicial ethics  
 7 or the code of ethics applicable to the executive branch of the Commonwealth. In  
 8 addition, an administrative law judge or a member of the board may be removed for  
 9 the persistent or repeated failure to perform satisfactorily the specific duties  
 10 assigned in this chapter, including the requirement of timely disposition of cases,  
 11 review of attorney's fees, and failure to attend training and continuing education  
 12 programs required by this section.

13 (6) Any vacancy in the term of an administrative law judge, which occurs prior to the  
 14 expiration of the term, shall be filled if necessary by appointment of the Governor in  
 15 accordance with subsection (3) of this section within sixty (60) days from the date  
 16 the vacancy occurs, with the consent of the Senate in accordance with KRS 11.160,  
 17 for the remainder of the term.

18 (7) (a) Effective at 12 midnight, December 31, 1997, the terms of administrative law  
 19 judges who were appointed to fill the five (5) administrative law judge  
 20 positions which were created in 1990 shall end, and the term of the chief  
 21 administrative law judge who was appointed under subsection (8) of this  
 22 section shall end. On January 1, 1998, the Governor shall make four (4) year  
 23 appointments to fill as many of these positions as are necessary to fulfill the  
 24 duties assigned to administrative law judges under this chapter.

25 (b) Effective at 12 midnight, December 31, 1999, the terms of administrative law  
 26 judges who were appointed to fill the ten (10) administrative law judge  
 27 positions which were created in 1987 shall end. On January 1, 2000, the

1 Governor shall make four (4) year appointments to fill as many of these  
 2 positions as are necessary to fulfill the duties assigned to administrative law  
 3 judges under this chapter.

- 4 (8) One (1) of the administrative law judges appointed pursuant to this section shall be  
 5 appointed as a chief administrative law judge, to have the same qualifications,  
 6 powers, duties, and requirements as those of other administrative law judges. The  
 7 chief administrative law judge shall not be assigned regular dockets but shall  
 8 instead assist the commissioner~~[executive director]~~ by doing all scheduling of the  
 9 administrative law judges, handling dockets assigned to the administrative law  
 10 judges in case of an emergency, providing supervision of the administrative law  
 11 judges, and providing educational opportunities for the administrative law judges.  
 12 The chief administrative law judge shall be paid at the same rate as the  
 13 administrative law judges plus an additional three thousand dollars (\$3,000) per  
 14 year. At any time the commissioner~~[executive director]~~ may replace the chief  
 15 administrative law judge with one (1) of the other administrative law judges at  
 16 which time the former chief administrative law judge shall resume the duties  
 17 assigned to the other administrative law judges pursuant to this chapter. The term of  
 18 the chief administrative law judge employed in 1994 shall expire on December 31,  
 19 1997. On January 1, 1998, the commissioner~~[executive director]~~ shall employ a  
 20 person in this position for a four (4) year term.

21 ➔Section 1802. KRS 342.231 is amended to read as follows:

22 The ~~{Department of}~~Labor Cabinet shall report monthly to the Committee on  
 23 Appropriations and Revenue its monthly expenditures of restricted agency funds and the  
 24 nature of such expenditures. Separate reporting shall be done by each office within the  
 25 ~~{Department of}~~Labor Cabinet and for general administration and support.

26 ➔Section 1803. KRS 342.232 is amended to read as follows:

- 27 (1) The boards of directors of the following funds shall make quarterly reports



1 according to generally accepted accounting principles of all money received and  
 2 disbursed by the listed funds during each quarter to the Legislative Research  
 3 Commission. The funds which shall be reported are:

- 4 (a) Kentucky individual self-insurance guaranty fund;
- 5 (b) Kentucky group self-insurance fund; and
- 6 (c) Kentucky coal employers self-insurance fund.

7 (2) The director of the Division of Workers' Compensation Funds shall make quarterly  
 8 reports according to generally accepted accounting principles of all money received  
 9 and disbursed by the coal workers' pneumoconiosis fund to the Legislative Research  
 10 Commission.

11 (3) The Department~~{Office}~~ of Workers' Claims shall make quarterly reports to the  
 12 Legislative Research Commission on the status of the provisions of this chapter.

13 ➔Section 1804. KRS 342.235 is amended to read as follows:

14 The commissioner~~{executive director}~~ and employees or authorized representatives of the  
 15 department shall, for traveling necessitated by the discharge of official duties, be  
 16 reimbursed for transportation actually paid for, not exceeding the regular fare over the  
 17 most direct route, and meals and lodging actually paid for.

18 ➔Section 1805. KRS 342.240 is amended to read as follows:

19 The department~~{office}~~ shall maintain its main office in Frankfort, Kentucky, using  
 20 suitable rooms and offices belonging to this state, and shall be provided necessary office  
 21 furniture to be paid for by the state. The commissioner~~{executive director}~~ shall provide  
 22 necessary supplies, books, periodicals, and maps and shall provide a seal for the  
 23 authentication of orders, awards, or proceedings of the administrative law judges, on  
 24 which shall be inserted the words "Department~~{Office}~~ of Workers' Claims, State of  
 25 Kentucky, official seal." The board and the administrative law judges may hold sessions  
 26 at any place within the state where necessary and shall have power to sue or institute legal  
 27 proceedings in any court of this state, under existing laws as to jurisdiction of actions.

1 Unless consented to by the commissioner~~[executive director]~~, all actions or proceedings  
 2 against the board or a member in his or her official capacity, or against an administrative  
 3 law judge or the commissioner~~[executive director]~~ in his or her official capacity, shall be  
 4 brought in the courts of Franklin County.

5 ➔Section 1806. KRS 342.245 is amended to read as follows:

6 All proceedings of the board and the administrative law judges shall be recorded in books  
 7 kept for that purpose by the commissioner~~[executive director]~~, which shall constitute a  
 8 public record and shall contain an entry of each case, claim, or proceeding considered,  
 9 heard or passed upon by each administrative law judge and the board, with the award,  
 10 finding or decisions made thereon.

11 ➔Section 1807. KRS 342.260 is amended to read as follows:

12 (1) The commissioner~~[executive director]~~ shall prepare administrative regulations as he  
 13 or she considers necessary to carry on the work of the department~~[office]~~ and the  
 14 work of the administrative law judges and may promulgate administrative  
 15 regulations not inconsistent with this chapter and KRS Chapter 13A for carrying out  
 16 the provisions of this chapter.

17 (2) The commissioner~~[executive director]~~ shall develop or adopt life expectancy tables  
 18 for use in making computations for the apportionment of benefits under KRS  
 19 342.120, computation of attorneys' fees under KRS 342.320, and for use in all other  
 20 situations arising under this chapter in which the calculation of a life expectancy is  
 21 necessary or desirable, including the computation of assessments or reserves for  
 22 self-insurers. The commissioner~~[executive director]~~ may adopt life tables published  
 23 by the United States Department of Health and Human Services or other life tables  
 24 developed by a qualified entity, as determined by the commissioner~~[executive~~  
 25 ~~director]~~. The life tables designated by the commissioner~~[executive director]~~  
 26 through administrative regulation in effect as of the date of an opinion, award, or  
 27 settlement approved by an administrative law judge shall apply to computations

1 concerning that opinion, award, or settlement.

2 (3) Processes and procedure under this chapter shall be as summary and simple as  
3 reasonably possible. The board or any member thereof or any administrative law  
4 judge for the purpose of this chapter, may subpoena witnesses, administer or cause  
5 to have administered oaths, and examine or cause to have examined those parts of  
6 the books and records of the parties to a proceeding as relate to questions in dispute.

7 (4) The sheriff shall serve all subpoenas of the board and administrative law judges and  
8 shall receive the same fee as provided by law for like service in civil actions. Each  
9 witness who appears in obedience to the subpoena of the board or any  
10 administrative law judge shall receive for attendance the fees and mileage for  
11 witnesses in civil cases in the Circuit Courts.

12 (5) The Circuit Court shall, on application of the board, any member thereof, or any  
13 administrative law judge, enforce by proper proceedings the attendance and  
14 testimony of witnesses and the production and examination of books, papers, and  
15 records.

16 ➔Section 1808. KRS 342.265 is amended to read as follows:

17 (1) If the employee and employer and special fund or any of them reach an agreement  
18 conforming to the provisions of this chapter in regard to compensation, a  
19 memorandum of the agreement signed by the parties or their representatives shall be  
20 filed with the commissioner~~[executive director]~~, and, if approved by an  
21 administrative law judge, shall be enforceable pursuant to KRS 342.305. Where all  
22 parties have not joined in the settlement agreement, it shall not be approved unless  
23 it is certified that the party not participating in the settlement has been served with a  
24 copy of the agreement not less than ten (10) days prior to submission of the  
25 agreement for approval. This provision shall not be construed to prevent the  
26 voluntary payment of compensation for the periods and in the amounts prescribed  
27 by this chapter, but nothing shall operate as a final settlement except a

1 memorandum of agreement filed with the commissioner~~{executive director}~~ and  
2 approved by the administrative law judge. Upon claims settled after December 12,  
3 1996, the special fund shall have the option of settling its liability for income  
4 benefits on the same terms as those reached between the employee and employer.  
5 Notice of the special fund exercise of the option granted in this subsection shall be  
6 made by letter of the director of the Division of Workers' Compensation Funds  
7 mailed to the parties within ten (10) days of receipt by the director of a copy of the  
8 agreement.

9 (2) Settlement agreements concluded after July 14, 2000, providing for commuted  
10 lump-sum payment of future income benefits which would otherwise be payable in  
11 amounts greater than one hundred dollars (\$100) per week shall not be approved  
12 unless there is reasonable assurance that the worker will have an adequate source of  
13 income during disability. This subsection is remedial and applies to all pending and  
14 future claims.

15 (3) Upon lump-sum settlement of future periodic payments, the discount rate used in  
16 the calculation of the settlement amount shall not exceed a reasonable amount fixed  
17 by the commissioner~~{executive director}~~. For settlements approved after December  
18 12, 1996, until December 31, 1997, the true discount rate shall be six percent (6%)  
19 compounded annually on each payment. Before January 1 of each year commencing  
20 in 2001, the commissioner~~{executive director}~~ shall fix the discount rate to be  
21 utilized in the succeeding year based at one-half of one percent (0.5%) below the  
22 interest rate paid upon ten (10) year United States Treasury Notes as of August 1 of  
23 the preceding year.

24 (4) If the parties have previously filed an agreement which has been approved by the  
25 administrative law judge, and compensation has been paid or is due in accordance  
26 therewith and the parties thereafter disagree, either party may invoke the provisions  
27 of KRS 342.125, which remedy shall be exclusive.

(5) An application for resolution of claim shall be held in abeyance during any period voluntary payments of income benefits are being made under any benefit sections of this chapter to the maximum which the employee's wages shall entitle unless it shall be shown that the prosecution of the employee's claim would be prejudiced by delay.

→ Section 1809. KRS 342.267 is amended to read as follows:

If an insurance carrier, self-insured group, or self-insured employer providing workers' compensation coverage engages in claims settlement practices in violation of this chapter, or the provisions of KRS 304.12-230, the commissioner~~executive director~~ of the Department~~Office~~ of Workers' Claims shall fine the insurance company, self-insured group, or self-insured employer the sum of one thousand dollars (\$1,000) to five thousand dollars (\$5,000) for each violation and if they have a pattern of violations, the commissioner~~executive director~~ may revoke the certificate of self-insurance or request the commissioner~~executive director~~ of insurance to revoke the certificate of authority of the insurance carrier or the self-insured group.

→ Section 1810. KRS 342.270 is amended to read as follows:

(1) If the parties fail to reach an agreement in regard to compensation under this chapter, either party may make written application for resolution of claim. The application must be filed within two (2) years after the accident, or, in case of death, within two (2) years after the death, or within two (2) years after the cessation of voluntary payments, if any have been made. When the application is filed by the employee or during the pendency of that claim, he or she shall join all causes of action against the named employer which have accrued and which are known, or should reasonably be known, to him or her. Failure to join all accrued causes of action will result in such claims being barred under this chapter as waived by the employee.

(2) Except with respect to claims for benefits by reason of coal workers'

1 pneumoconiosis, the commissioner~~[executive director]~~ shall issue notice of the  
 2 filing to all parties and shall promptly assign the claim to an administrative law  
 3 judge. The administrative law judge shall facilitate the exchange of information  
 4 pertinent to the claim pursuant to administrative regulations promulgated by the  
 5 commissioner~~[executive director]~~. Within forty-five (45) days of the date of  
 6 issuance of the notice required by this section, the employer or carrier shall file  
 7 notice of claim denial or acceptance, setting forth specifically those material matters  
 8 which are admitted, those which are denied, and the basis of any denial of the claim.

- 9 (3) Within one hundred twenty (120) days of July 14, 2000, the  
 10 commissioner~~[executive director]~~ shall promulgate administrative regulations  
 11 establishing procedures for the resolution of claims. The administrative regulations  
 12 promulgated pursuant to the provisions of this subsection shall be effective on an  
 13 emergency basis and be applied to all pending claims.

14 ➔Section 1811. KRS 342.275 is amended to read as follows:

- 15 (1) The commissioner~~[executive director]~~ shall promptly issue notice of the assignment  
 16 of the claim to an administrative law judge, time for presentation of proof and of the  
 17 time and place of a benefit review conference. The administrative law judge may  
 18 confer informally with the parties for the purpose of defining and narrowing the  
 19 issues, discussing settlement, and considering other relevant matters that may aid in  
 20 the disposition of the case.
- 21 (2) The administrative law judge may grant continuances or grant or deny any benefits  
 22 afforded under this chapter, including interlocutory relief, according to criteria  
 23 established in administrative regulations promulgated by the  
 24 commissioner~~[executive director]~~. The administrative law judge shall render the  
 25 award, order, or decision within sixty (60) days following the final hearing unless  
 26 extension is mutually agreed to by all parties. The award, order, or decision,  
 27 together with a statement of the findings of fact, rulings of law, and any other

1 matters pertinent to the question at issue shall be filed with the record of  
 2 proceedings, and a copy of the award, order, or decision shall immediately be sent  
 3 to the parties in dispute.

4 ➔Section 1812. KRS 342.276 is amended to read as follows:

5 (1) The commissioner~~executive director~~ shall establish a program to provide an  
 6 opportunity for mediation of disputes as to the entitlement to benefits under this  
 7 chapter.

8 (2) The commissioner~~executive director~~ shall promulgate administrative regulations  
 9 necessary to establish and implement the mediation program, which shall prescribe  
 10 the qualifications and duties of mediators; a process for the designation of  
 11 mediators; procedures for the conduct of mediation proceedings; and the issues  
 12 which shall be subject to mediation.

13 (3) Recommendations by mediators are without administrative or judicial authority and  
 14 are not binding on the parties unless the parties enter into a settlement agreement  
 15 incorporating the recommendations. Administrative law judges may participate in  
 16 the mediation process but shall not issue findings or orders as a result of the process  
 17 unless agreed to by the parties.

18 ➔Section 1813. KRS 342.277 is amended to read as follows:

19 (1) In accordance with administrative regulations promulgated by the  
 20 commissioner~~executive director~~, a collective bargaining agreement between an  
 21 employer and a recognized or certified exclusive bargaining representative that  
 22 contains the following provisions may be recognized as valid and binding:

23 (a) An alternative dispute resolution system to supplement, modify, or replace the  
 24 provisions of this chapter that relate to the resolution of disputes, and which  
 25 may include but is not limited to mediation and arbitration, the results of  
 26 which may be binding upon the parties;

27 (b) The use of an agreed list of providers of medical treatment, which may be the

1 exclusive source of all medical and related treatment provided under this  
2 chapter;

3 (c) The use of a limited list of physicians to conduct independent medical  
4 examinations;

5 (d) A light duty, modified job, or return-to-work program;

6 (e) A vocational rehabilitation or retraining program; and

7 (f) A twenty-four (24) hour health care coverage plan for medical benefits.

8 (2) A system of arbitration may provide that the decision of the arbiter is subject to  
9 review by an administrative law judge.

10 (3) Notwithstanding the provisions in subsection (1) of this section, no agreement shall  
11 be recognized as valid and binding that diminishes the rights of any of the parties  
12 under this chapter. Also, no agreement shall be valid and binding unless it is agreed  
13 to by the employer's insurance carrier.

14 ➔Section 1814. KRS 342.285 is amended to read as follows:

15 (1) An award or order of the administrative law judge as provided in KRS 342.275, if  
16 petition for reconsideration is not filed as provided for in KRS 342.281, shall be  
17 conclusive and binding as to all questions of fact, but either party may in  
18 accordance with administrative regulations promulgated by the  
19 commissioner~~executive director~~ appeal to the Workers' Compensation Board for  
20 the review of the order or award.

21 (2) No new or additional evidence may be introduced before the board except as to the  
22 fraud or misconduct of some person engaged in the administration of this chapter  
23 and affecting the order, ruling, or award, but the board shall otherwise hear the  
24 appeal upon the record as certified by the administrative law judge and shall dispose  
25 of the appeal in summary manner. The board shall not substitute its judgment for  
26 that of the administrative law judge as to the weight of evidence on questions of  
27 fact, its review being limited to determining whether or not:



- 1 (a) The administrative law judge acted without or in excess of his powers;
- 2 (b) The order, decision, or award was procured by fraud;
- 3 (c) The order, decision, or award is not in conformity to the provisions of this
- 4 chapter;
- 5 (d) The order, decision, or award is clearly erroneous on the basis of the reliable,
- 6 probative, and material evidence contained in the whole record; or
- 7 (e) The order, decision, or award is arbitrary or capricious or characterized by
- 8 abuse of discretion or clearly unwarranted exercise of discretion.
- 9 (3) Within sixty (60) days following the date on which the last appellate brief was filed,
- 10 the board shall enter its decision affirming, modifying, or setting aside the order,
- 11 decision, or award, or in its discretion remanding the claim to the administrative law
- 12 judge for further proceedings in conformity with the direction of the board. The
- 13 board may, before decision and upon a sufficient showing of fact, remand the claim
- 14 to the administrative law judge.

15 ➔Section 1815. KRS 342.315 is amended to read as follows:

- 16 (1) The commissioner~~[executive director]~~ shall contract with the University of
- 17 Kentucky and the University of Louisville medical schools to evaluate workers who
- 18 have had injuries or become affected by occupational diseases covered by this
- 19 chapter. Referral for evaluation may be made to one (1) of the medical schools
- 20 whenever a medical question is at issue.
- 21 (2) The physicians and institutions performing evaluations pursuant to this section shall
- 22 render reports encompassing their findings and opinions in the form prescribed by
- 23 the commissioner~~[executive director]~~. Except as otherwise provided in KRS
- 24 342.316, the clinical findings and opinions of the designated evaluator shall be
- 25 afforded presumptive weight by administrative law judges and the burden to
- 26 overcome such findings and opinions shall fall on the opponent of that evidence.
- 27 When administrative law judges reject the clinical findings and opinions of the

1 designated evaluator, they shall specifically state in the order the reasons for  
2 rejecting that evidence.

3 (3) The commissioner~~[executive director]~~ or an administrative law judge may, upon the  
4 application of any party or upon his own motion, direct appointment by the  
5 commissioner~~[executive director]~~, pursuant to subsection (1) of this section, of a  
6 medical evaluator to make any necessary medical examination of the employee.  
7 Such medical evaluator shall file with the commissioner~~[executive director]~~ within  
8 fifteen (15) days after such examination a written report. The medical evaluator  
9 appointed may charge a reasonable fee not exceeding fees established by the  
10 commissioner~~[executive director]~~ for those services.

11 (4) Within thirty (30) days of the receipt of a statement for the evaluation, the employer  
12 or carrier shall pay the cost of the examination. Upon notice from the  
13 commissioner~~[executive director]~~ that an evaluation has been scheduled, the  
14 insurance carrier shall forward within seven (7) days to the employee the expenses  
15 of travel necessary to attend the evaluation at a rate equal to that paid to state  
16 employees for travel by private automobile while conducting state business.

17 (5) Upon claims in which it is finally determined that the injured worker was not the  
18 employee at the time of injury of an employer covered by this chapter, the special  
19 fund shall reimburse the carrier for any evaluation performed pursuant to this  
20 section for which the carrier has been erroneously compelled to make payment.

21 (6) Not less often than annually the designee of the secretary of the Cabinet for Health  
22 and Family Services shall assess the performance of the medical schools and render  
23 findings as to whether evaluations conducted under this section are being rendered  
24 in a timely manner, whether examinations are conducted in accordance with  
25 medically recognized techniques, whether impairment ratings are in conformity  
26 with standards prescribed by the latest edition available of the "Guides to the  
27 Evaluation of Permanent Impairment" published by the American Medical

1 Association, and whether coal workers' pneumoconiosis examinations are  
2 conducted in accordance with the standards prescribed in this chapter.

- 3 (7) The General Assembly finds that good public policy mandates the realization of the  
4 potential advantages, both economic and effectual, of the use of telemedicine and  
5 telehealth. The commissioner~~[executive director]~~ may, to the extent that he or she  
6 finds it feasible and appropriate, require the use of telemedicine and telehealth  
7 practices, as authorized under KRS 194A.125, in the independent medical  
8 evaluation process required by this chapter.

9 ➔Section 1816. KRS 342.316 is amended to read as follows:

- 10 (1) (a) The employer liable for compensation for occupational disease shall be the  
11 employer in whose employment the employee was last exposed to the hazard  
12 of the occupational disease. During any period in which this section is  
13 applicable to a coal mine, an operator who acquired it or substantially all of its  
14 assets from a person who was its operator on and after January 1, 1973, shall  
15 be liable for, and secure the payment of, the benefits which would have been  
16 payable by the prior operator under this section with respect to miners  
17 previously employed in the mine if it had not been acquired by such later  
18 operator. At the same time, however, this subsection does not relieve the prior  
19 operator of any liability under this section. Also, it does not affect whatever  
20 rights the later operator might have against the prior operator.

- 21 (b) The time of the beginning of compensation payments shall be the date of the  
22 employee's last injurious exposure to the cause of the disease, or the date of  
23 actual disability, whichever is later.

- 24 (2) The procedure with respect to the giving of notice and determination of claims in  
25 occupational disease cases and the compensation and medical benefits payable for  
26 disability or death due to the disease shall be the same as in cases of accidental  
27 injury or death under the general provisions of this chapter, except that notice of

claim shall be given to the employer as soon as practicable after the employee first experiences a distinct manifestation of an occupational disease in the form of symptoms reasonably sufficient to apprise the employee~~[him]~~ that he or she has contracted the disease, or a diagnosis of the disease is first communicated to him or her, whichever shall first occur.

(3) The procedure for filing occupational disease claims shall be as follows:

(a) The application for resolution of claim shall set forth the complete work history of the employee with a concise description of injurious exposure to a specific occupational disease, together with the name and addresses of the employer or employers with the approximate dates of employment. The application shall also include at least one (1) written medical report supporting his or her claim. This medical report shall be made on the basis of clinical or X-ray examination performed in accordance with accepted medical standards and shall contain full and complete statements of all examinations performed and the results thereof. The report shall be made by a duly-licensed physician. The commissioner~~[executive director]~~ shall promulgate administrative regulations which prescribe the format of the medical report required by this section and the manner in which the report shall be completed.

1. For coal-related occupational pneumoconiosis claims, each clinical examination shall include a chest X-ray interpretation by a National Institute of Occupational Safety and Health (NIOSH) certified "B" reader. The chest X-ray upon which the report is made shall be filed with the application as well as spirometric tests when pulmonary dysfunction is alleged.

2. For other compensable occupational pneumoconiosis claims, each clinical examination shall include a chest X-ray examination and appropriate pulmonary function tests.

1 (b) To be admissible, medical evidence offered in any proceeding under this  
2 chapter for determining a claim for occupational pneumoconiosis resulting  
3 from exposure to coal dust shall comply with accepted medical standards as  
4 follows:

- 5 1. Chest X-rays shall be of acceptable quality with respect to exposure and  
6 development and shall be indelibly labeled with the date of the X-ray  
7 and the name and Social Security number of the claimant. Physicians'  
8 reports of X-ray interpretations shall: identify the claimant by name and  
9 Social Security number; include the date of the X-ray and the date of the  
10 report; classify the X-ray interpretation using the latest ILO  
11 Classification and be accompanied by a completed copy of the latest ILO  
12 Classification report. Only interpretations by National Institute of  
13 Occupational Safety and Health (NIOSH) certified "B" readers shall be  
14 admissible.
- 15 2. Spirometric testing shall be conducted in accordance with the standards  
16 recommended in the latest edition available of the "Guides to the  
17 Evaluation of Permanent Impairment" published by the American  
18 Medical Association and the 1978 ATS epidemiology standardization  
19 project with the exception that the predicted normal values for lung  
20 function shall not be adjusted based upon the race of the subject. The  
21 FVC or the FEV1 values shall represent the largest of such values  
22 obtained from three (3) acceptable forced expiratory volume maneuvers  
23 as corrected to BTPS (body temperature, ambient pressure and saturated  
24 with water vapor at these conditions) and the variance between the two  
25 (2) largest acceptable FVC values shall be either less than five percent  
26 (5%) of the largest FVC value or less than one hundred (100) milliliters,  
27 whichever is greater. The variance between the two (2) largest

1 acceptable FEV1 values shall be either less than five percent (5%) of the  
 2 largest FEV1 value or less than one hundred (100) milliliters, whichever  
 3 is greater. Reports of spirometric testing shall include a description by  
 4 the physician of the procedures utilized in conducting such spirometric  
 5 testing and a copy of the spirometric chart and tracings from which  
 6 spirometric values submitted as evidence were taken.

7 3. The commissioner~~executive director~~ shall promulgate administrative  
 8 regulations pursuant to KRS Chapter 13A as necessary to effectuate the  
 9 purposes of this section. The commissioner~~executive director~~ shall  
 10 periodically review the applicability of the spirometric test values  
 11 contained in the latest edition available of the "Guides to the Evaluation  
 12 of Permanent Impairment" published by the American Medical  
 13 Association and may by administrative regulation substitute other  
 14 spirometric test values which are found to be more closely representative  
 15 of the normal pulmonary function of the coal mining population.

16 4. The procedure for determination of occupational disease claims shall be  
 17 as follows:

18 a. Immediately upon receipt of an application for resolution of claim,  
 19 the commissioner~~executive director~~ shall notify the responsible  
 20 employer and all other interested parties and shall furnish them  
 21 with a full and complete copy of the application.

22 b. The commissioner~~executive director~~ shall assign the claim to an  
 23 administrative law judge and, except for coal workers'  
 24 pneumoconiosis claims, shall promptly refer the employee to such  
 25 physician or medical facility as the commissioner~~executive~~  
 26 ~~director~~ may select for examination. The report from this  
 27 examination shall be provided to all parties of record. The

1 employee shall not be referred by the commissioner~~executive~~  
2 ~~director~~] for examination within two (2) years following any prior  
3 referral for examination for the same disease.

4 c. Except for coal workers' pneumoconiosis claims, within forty-five  
5 (45) days following the notice of filing an application for  
6 resolution of claim, the employer or carrier shall notify the  
7 commissioner~~executive director~~] and all parties of record of its  
8 acceptance or denial of the claim. A denial shall be in writing and  
9 shall state the specific basis for the denial. In coal workers'  
10 pneumoconiosis claims, the employer's notice of claim denial or  
11 acceptance shall be filed within thirty (30) days of the issuance by  
12 the commissioner~~executive director~~] of the notice of the  
13 consensus reading unless the consensus is that the miner has not  
14 developed coal workers' pneumoconiosis category 1/0 or greater.  
15 In the event the consensus procedure is exhausted without  
16 consensus being established, the employer's notice of claim denial  
17 or acceptance shall be filed within thirty (30) days of the  
18 commissioner~~executive director~~] notification to the  
19 administrative law judge that consensus has not been reached.

20 d. Within forty-five (45) days of assignment of a coal workers'  
21 pneumoconiosis claim to an administrative law judge, the  
22 employer shall cause the employee to be examined by a physician  
23 of the employer's choice and shall provide to all other parties and  
24 file with the commissioner~~executive director~~] the X-ray  
25 interpretation by a "B" reader. The examination of the employee  
26 shall include spirometric testing if pulmonary dysfunction is  
27 alleged by the employee in the application for resolution of a

1 claim. The commissioner~~[executive director]~~ shall determine  
 2 whether the X-ray interpretations filed by the parties are in  
 3 consensus.

4 e. If the readings are not in consensus, the commissioner~~[executive~~  
 5 ~~director]~~ shall forward both films, masking information identifying  
 6 the facility where the X-ray was obtained and the referring  
 7 physician, consecutively to three (3) "B" readers selected randomly  
 8 from a list maintained by the commissioner~~[executive director]~~ for  
 9 interpretation. Each "B" reader shall select the highest quality film  
 10 and report only the interpretation of that film. The  
 11 commissioner~~[executive director]~~ shall determine if two (2) of the  
 12 X-ray interpretations filed by the three (3) "B" readers selected  
 13 randomly are in consensus. If consensus is reached, the  
 14 commissioner~~[executive director]~~ shall forward copies of the  
 15 report to all parties as well as notice of the consensus reading  
 16 which shall be considered as evidence. If consensus is not reached,  
 17 the administrative law judge shall decide the claim on the evidence  
 18 submitted.

19 f. "Consensus" is reached between two (2) chest X-ray interpreters  
 20 when their classifications meet one (1) of the following criteria:  
 21 each finds either category A, B, or C progressive massive fibrosis;  
 22 or findings with regard to simple pneumoconiosis are both in the  
 23 same major category and within one (1) minor category (ILO  
 24 category twelve (12) point scale) of each other.

25 g. The administrative law judge shall conduct such proceedings as  
 26 are necessary to resolve the claim and shall have authority to grant  
 27 or deny any relief, including interlocutory relief, to order additional



proof, to conduct a benefit review conference, or to take such other action as may be appropriate to resolve the claim.

h. Unless a voluntary settlement is reached by the parties, or the parties agree otherwise, the administrative law judge shall issue a written determination within sixty (60) days following a hearing. The written determination shall address all contested issues and shall be enforceable under KRS 342.305.

5. The procedure for appeal from a determination of an administrative law judge shall be as set forth in KRS 342.285.

(4) (a) The right to compensation under this chapter resulting from an occupational disease shall be forever barred unless a claim is filed with the commissioner~~executive director~~ within three (3) years after the last injurious exposure to the occupational hazard or after the employee first experiences a distinct manifestation of an occupational disease in the form of symptoms reasonably sufficient to apprise the employee~~him~~ that he or she has contracted the disease, whichever shall last occur; and if death results from the occupational disease within that period, unless a claim therefor be filed with the commissioner~~executive director~~ within three (3) years after the death; but that notice of claim shall be deemed waived in case of disability or death where the employer, or its~~his~~ insurance carrier, voluntarily makes payment therefor, or if the incurrence of the disease or the death of the employee and its cause was known to the employer. However, the right to compensation for any occupational disease shall be forever barred, unless a claim is filed with the commissioner~~executive director~~ within five (5) years from the last injurious exposure to the occupational hazard, except that, in cases of radiation disease or asbestos-related disease, a claim must be filed within twenty (20) years from the last injurious exposure to the occupational hazard.

- 1 (b) Income benefits for the disease of pneumoconiosis resulting from exposure to  
 2 coal dust or death therefrom shall not be payable unless the employee has  
 3 been exposed to the hazards of such pneumoconiosis in the Commonwealth of  
 4 Kentucky over a continuous period of not less than two (2) years during the  
 5 ten (10) years immediately preceding the date of his or her last exposure to  
 6 such hazard, or for any five (5) of the fifteen (15) years immediately preceding  
 7 the date of such last exposure.
- 8 (5) The amount of compensation payable for disability due to occupational disease or  
 9 for death from the disease, and the time and manner of its payment, shall be as  
 10 provided for under the general provisions of the Workers' Compensation Act, but:
- 11 (a) In no event shall the payment exceed the amounts that were in effect at the  
 12 time of the last injurious exposure;
- 13 (b) The time of the beginning of compensation payments shall be the date of the  
 14 employee's last injurious exposure to the cause of the disease, or the date of  
 15 actual disability, whichever is later; and
- 16 (c) In case of death where the employee has been awarded compensation or made  
 17 timely claim within the period provided for in this section, and an employee  
 18 has suffered continuous disability to the date of his or her death occurring at  
 19 any time within twenty (20) years from the date of disability, his or her  
 20 dependents, if any, shall be awarded compensation for his or her death as  
 21 provided for under the general provisions of the Workers' Compensation Act  
 22 and in this section, except as provided in KRS 342.750(6).
- 23 (6) If an autopsy has been performed, no testimony relative thereto shall be admitted  
 24 unless the employer or ~~its~~<sup>his</sup> representative has available findings and reports of  
 25 the pathologist or doctor who performed the autopsy examination.
- 26 (7) No compensation shall be payable for occupational disease if the employee at the  
 27 time of entering the employment of the employer by whom compensation would

1 otherwise be payable, falsely represented himself or herself, in writing, as not  
2 having been previously disabled, laid off, or compensated in damages or otherwise,  
3 because of the occupational disease, or failed or omitted truthfully to state to the  
4 best of his or her knowledge, in answer to written inquiry made by the employer,  
5 the place, duration, and nature of previous employment, or, to the best of his or her  
6 knowledge, the previous state of his or her health.

7 (8) No compensation for death from occupational disease shall be payable to any  
8 person whose relationship to the deceased, which under the provisions of this  
9 chapter would give right to compensation, arose subsequent to the beginning of the  
10 first compensable disability, except only for after-born children of a marriage  
11 existing at the beginning of such disability.

12 (9) Whenever any claimant misconceives his or her remedy and files an application for  
13 adjustment of claim under the general provisions of this chapter and it is  
14 subsequently discovered, at any time before the final disposition of the cause, that  
15 the claim for injury, disability, or death which was the basis for his or her  
16 application should properly have been made under the provisions of this section,  
17 then the application so filed may be amended in form or substance, or both, to assert  
18 a claim for injury, disability, or death under the provisions of this section, and it  
19 shall be deemed to have been so filed as amended on the date of the original filing  
20 thereof, and compensation may be awarded that is warranted by the whole evidence  
21 pursuant to the provisions of this chapter. When amendment of this type is  
22 submitted, further or additional evidence may be heard when deemed necessary.  
23 Nothing this section contains shall be construed to be or permit a waiver of any of  
24 the provisions of this chapter with reference to notice of time for filing of a claim,  
25 but notice of filing a claim, if given or done, shall be deemed to be a notice of filing  
26 of a claim under provisions of this chapter, if given or done within the time required  
27 by this subsection.

- 1 (10) When an employee has an occupational disease that is covered by this chapter, the  
2 employer in whose employment he or she was last injuriously exposed to the hazard  
3 of the disease, and the employer's insurance carrier, if any, at the time of the  
4 exposure, shall alone be liable therefor, without right to contribution from any prior  
5 employer or insurance carrier, except as otherwise provided in this chapter.
- 6 (11) (a) Income benefits for coal-related occupational pneumoconiosis shall be paid  
7 fifty percent (50%) by the Kentucky coal workers' pneumoconiosis fund as  
8 established in KRS 342.1242 and fifty percent (50%) by the employer in  
9 whose employment the employee was last exposed to the hazard of that  
10 occupational disease.
- 11 (b) Compensation for all other occupational disease shall be paid by the employer  
12 in whose employment the employee was last exposed to the hazards of the  
13 occupational disease.
- 14 (12) A concluded claim for benefits by reason of contraction of coal workers'  
15 pneumoconiosis in the severance or processing of coal shall bar any subsequent  
16 claim for benefits by reason of contraction of coal workers' pneumoconiosis, unless  
17 there has occurred in the interim between the conclusion of the first claim and the  
18 filing of the second claim at least two (2) years of employment wherein the  
19 employee was continuously exposed to the hazards of the disease in the  
20 Commonwealth.
- 21 (13) For coal-related occupational pneumoconiosis claims, the consensus procedure shall  
22 apply to all claims which have not been assigned to an administrative law judge  
23 prior to July 15, 2002. The consensus classification shall be presumed to be the  
24 correct classification of the employee's condition unless overcome by clear and  
25 convincing evidence. If an administrative law judge finds that the presumption of  
26 correctness of the consensus reading has been overcome, the reasons shall be  
27 specially stated in the administrative law judge's order.

1        ➔ Section 1817. KRS 342.320 is amended to read as follows:

2        (1) All fees of attorneys and physicians, and all charges of hospitals under this chapter,  
3        shall be subject to the approval of an administrative law judge pursuant to the  
4        statutes and administrative regulations.

5        (2) In an original claim, attorney's fees for services under this chapter on behalf of an  
6        employee shall be subject to the following maximum limits:

7        (a) Twenty percent (20%) of the first twenty-five thousand dollars (\$25,000) of  
8        the award, fifteen percent (15%) of the next ten thousand dollars (\$10,000),  
9        and five percent (5%) of the remainder of the award, not to exceed a  
10       maximum fee of twelve thousand dollars (\$12,000). This fee shall be paid by  
11       the employee from the proceeds of the award or settlement.

12       (b) Attorney-client employment contracts entered into and signed after July 14,  
13       2000, shall be subject to the conditions of paragraph (a) of this subsection.

14       (3) In approving an allowance of attorney's fees, the administrative law judge shall  
15       consider the extent, complexity, and quality of services rendered, and in the case of  
16       death, the Remarriage Tables of the Dutch Royal Insurance Institute. An attorney's  
17       fee may be denied or reduced upon proof of solicitation by the attorney. However,  
18       this provision shall not be construed to preclude advertising in conformity with  
19       standards prescribed by the Kentucky Supreme Court.

20       (4) No attorney's fee in any case involving benefits under this chapter shall be paid until  
21       the fee is approved by the administrative law judge, and any contract for the  
22       payment of attorney's fees otherwise than as provided in this section shall be void.  
23       The motion for approval of an attorney's fee shall be submitted within thirty (30)  
24       days following finality of the claim. Except when the attorney's fee is to be paid by  
25       the employer or carrier, the attorney's fee shall be paid in one (1) of the following  
26       ways:

27       (a) The employee may pay the attorney's fee out of his or her personal funds or

1 from the proceeds of a lump-sum settlement; or

2 (b) The administrative law judge, upon request of the employee, may order the  
3 payment of the attorney's fee in a lump sum directly to the attorney of record  
4 and deduct the attorney's fee from the weekly benefits payable to the employee  
5 in equal installments over the duration of the award or until the attorney's fee  
6 has been paid, commuting sufficient sums to pay the fee.

7 (5) At the commencement of the attorney-client relationship, the attorney shall explain  
8 to the employee the methods by which this section provides for the payment of the  
9 attorney's fee, and the employee shall select the method in which ~~the~~<sup>his</sup> attorney's  
10 fee is to be paid. His or her selection and statement that he or she fully understands  
11 the method to be used shall be submitted by his or her attorney, on a notarized form  
12 signed by the employee, at the time the motion for approval of the attorney's fee is  
13 submitted. The commissioner~~executive director~~ shall develop the format and  
14 content of the form to be used pursuant to this section. The form to be used shall list  
15 on its face all options permitted in this section for the payment of an attorney's fees  
16 and contain an explanation in nontechnical language of each method.

17 (6) The General Assembly declares that by the enactment of KRS 342.316(3), it is the  
18 legislative intent to encourage settlement and prompt administrative handling of  
19 those claims and thereby reduce expenses to claimants for compensation under the  
20 provisions of KRS 342.316, and the administrative law judge shall give due regard  
21 to this legislative intent in the handling of uncontested claims and the allowance of  
22 attorney's fees therein.

23 (7) In a claim that has been reopened pursuant to the provisions of this chapter, an  
24 attorney's fee may be awarded by the administrative law judge subject to the limits  
25 set forth in subsection (2) of this section. In awarding the attorney's fee, the  
26 administrative law judge shall consider the factors set forth in subsection (3) of this  
27 section. If no additional amount is recovered upon reopening, no attorney's fee shall

be awarded. No attorney's fee shall be allowed or approved exceeding the amounts provided in subsection (2)(a) of this section applicable to any additional amount recovered.

- (8) Attorney's fees for representing employers in proceedings under this chapter pursuant to contract with the employer shall be subject to approval of the administrative law judge in the same manner as prescribed for attorney representation of employees. Employer attorney's fees are subject to the limitation of twelve thousand dollars (\$12,000) maximum fees except that fees for representing employers shall not be dependent upon the result achieved. Employer attorney's fees may be paid on a periodic basis while a claim is adjudicated and the payments need not be approved until the claims resolution process is completed. Fees for legal services in presenting a claim for reimbursement from the Kentucky coal workers' pneumoconiosis fund shall not exceed one thousand dollars (\$1,000). All such approved fees shall be paid by the employer and in no event shall exceed the amount the employer agreed by contract to pay.

➔Section 1818. KRS 342.329 is amended to read as follows:

- (1) The Division of Ombudsman and Workers' Compensation Specialist Services shall be headed by a director appointed by the commissioner with the approval of the Governor, in accordance with KRS 12.050 and 342.230~~[executive director]~~. The functions of the division shall include:
- (a) Serving as an information source for employees, employers, medical, vocational, and rehabilitation personnel, carriers, and self-insurers;
  - (b) Responding to inquiries and complaints relative to the workers' compensation program;
  - (c) Advising all parties of their rights and obligations under this chapter;
  - (d) Assisting workers in obtaining medical reports, job descriptions, and other materials pertinent to a claim for benefits and preparing all documents

1 necessary for a claim application; and

2 (e) Performing other duties as required by the commissioner~~[executive director]~~  
 3 through administrative regulations promulgated by the  
 4 commissioner~~[executive director]~~.

5 (2) The employee, employer, carrier, self-insured administrator, and medical provider  
 6 shall promptly comply with reasonable information requests from an ombudsman.

7 (3) The ombudsman program shall be staffed with personnel trained in techniques  
 8 performed by ombudsmen and who are familiar with medical and vocational  
 9 rehabilitation principles and knowledgeable about the provisions of this chapter and  
 10 applicable administrative regulations.

11 (4) A toll-free telephone number shall be provided throughout the Commonwealth to  
 12 insure easy access by all parties to the division.

13 ➔Section 1819. KRS 342.335 is amended to read as follows:

14 (1) No person shall knowingly file, or permit to be filed, any false or fraudulent claim  
 15 on his or her behalf to compensation or other benefits under this chapter, or by  
 16 fraud, deceit, or misrepresentation procure or cause to be made or receive any  
 17 payments of compensation or other benefits under this chapter to which the  
 18 recipient is not lawfully entitled, or conspire with, aid, or abet another so to do. No  
 19 person shall by deceit or misrepresentation or with intent to defraud cause or  
 20 procure or conspire with, aid or abet another in so causing or procuring any person  
 21 entitled to compensation or other benefits under this chapter to delay or omit to  
 22 claim title thereto or to accept the payment of a less sum than that to which he or  
 23 she may be lawfully entitled ~~[to]~~thereunder.

24 (2) Any person, as that term is defined in KRS 342.0011, who knowingly, as defined in  
 25 KRS 501.020, makes any false representation, including misrepresentations of  
 26 hazards, classifications, payrolls, or other facts by an employer or its agent that are  
 27 designed to cause a reduction in the employer's premium, for the purpose of or in



the course of receiving or providing any service or benefit available under this chapter, shall be subject to the civil fines imposed pursuant to KRS 342.990 for a violation of this subsection. In addition, if a person who violates the provisions of this subsection is also dependent upon a professional license to provide any service or benefit under this chapter, the commissioner~~executive director~~ shall refer the matter to the appropriate licensing body and recommend revocation of that person's license to work at his or her profession in the Commonwealth of Kentucky.

→ Section 1820. KRS 342.340 is amended to read as follows:

- (1) Every employer under this chapter shall either insure and keep insured its~~his~~ liability for compensation hereunder in some corporation, association, or organization authorized to transact the business of workers' compensation insurance in this state or shall furnish to the commissioner~~executive director~~ satisfactory proof of its~~his~~ financial ability to pay directly the compensation in the amount and manner and when due as provided for in this chapter. In the latter case, the commissioner~~executive director~~ shall require the deposit of an acceptable security, indemnity, or bond to secure, to the extent the commissioner~~executive director~~ directs, the payment of compensation liabilities as they are incurred. A public sector self-insured employer shall not be required to deposit funds as security, indemnity, or bond to secure the payment of liabilities under this chapter, if the public employer has authority to raise taxes, notwithstanding provisions of KRS 68.245, 132.023, 132.027, and 160.470 relating to recall and reconsideration of local taxes; raise tuition; issue bonds; raise fees or fares for services provided; or has other authority to generate funds for its operation.
- (2) Every employer subject to this chapter shall file, or have filed on its behalf, with the department~~office~~, as often as may be necessary, evidence of its compliance with the provisions of this section and all others relating hereto. Any insurance carrier or self-insured group providing workers' compensation insurance coverage for a

1 Kentucky location shall file on behalf of the employer, with the  
 2 commissioner~~[executive director]~~, evidence of the employer's compliance with this  
 3 chapter. Evidence of compliance filed with the department~~[office]~~ may include a  
 4 named additional insured who has been provided proof of workers' compensation  
 5 insurance coverage by the employer. The filing shall be made within ten (10) days  
 6 after the issuance of a policy, endorsement to a policy, or similar documentation of  
 7 coverage. Every employer who has complied with the foregoing provision and has  
 8 subsequently canceled its insurance or its membership in an approved self-insured  
 9 group, as the case may be, shall immediately notify, or have notice given on its  
 10 behalf to the department~~[office]~~ of the cancellation, the date thereof, and the  
 11 reasons therefor; and every insurance carrier or self-insured group shall in like  
 12 manner notify the commissioner~~[executive director]~~ upon the cancellation, lapse,  
 13 termination, expiration by reason of termination of policy period, or nonrenewal of  
 14 any policy issued by it or termination of any membership agreement, whichever is  
 15 applicable under the provisions of this chapter, except that the carrier or self-insured  
 16 group need not set forth its reasons therefor unless requested by the  
 17 commissioner~~[executive director]~~. The above filings are to be made on the forms  
 18 prescribed by the commissioner~~[executive director]~~. Termination of any policy of  
 19 insurance issued under the provisions of this chapter shall take effect no greater than  
 20 ten (10) days prior to the receipt of the notification by the commissioner~~[executive~~  
 21 ~~director]~~ unless the employer has obtained other insurance and the  
 22 commissioner~~[executive director]~~ is notified of that fact by the insurer assuming the  
 23 risk. Upon determination that any employer under this chapter has failed to comply  
 24 with these provisions, the commissioner~~[executive director]~~ shall promptly notify  
 25 interested government agencies of this failure and, with particular reference to  
 26 employers engaged in coal mining, the commissioner~~[executive director]~~ shall  
 27 promptly report any failures to the Department for Natural Resources so that

appropriate action may be undertaken pursuant to KRS 351.175.

- (3) The Department~~{Office}~~ of Workers' Claims shall notify a named additional insured at the address listed on the evidence of coverage under a workers' compensation insurance policy upon the cancellation, lapse, termination, expiration, or nonrenewal of a workers' compensation insurance policy issued by the insurance carrier. The notice required in this subsection shall be provided by the department~~{office}~~ no later than ten (10) days after the insurance notice is provided to the commissioner~~{executive-director}~~ as required in subsection (2) of this section.

➔Section 1821. KRS 342.342 is amended to read as follows:

- (1) Notwithstanding the provisions of KRS 342.340, KRS 342.350, or any administrative regulations promulgated pursuant to those provisions, the commissioner~~{executive-director}~~ shall annually review the adequacy of the financial or other security requirements contained in administrative regulations, promulgated pursuant to the individual self-insurance provisions in this chapter. The commissioner~~{executive-director}~~ shall report the results of the review to the Labor and Industry Committee of the General Assembly and any recommendations for proposed changes to insure the financial soundness of the individual self-insurers authorized pursuant to this chapter. In addition, the commissioner~~{executive-director}~~ shall report not less often than annually a summary report on the financial soundness of the individual self-insurers.
- (2) The Labor and Industry Committee of the General Assembly shall annually review the administrative regulations promulgated pursuant to the individual provisions under this chapter.
- (3) On July 1, 1994, the Division of Security and Compliance of the Department~~{Office}~~ of Workers' Claims in the ~~{Department of}~~Labor Cabinet shall be expanded by five (5) employees. These additional employees shall be employed

1 for the purpose of conducting financial audits, examinations, and reviews and other  
 2 activities necessary to ensure and monitor the financial soundness of the individual  
 3 self-insured employers authorized pursuant to KRS 342.340.

4 ➔Section 1822. KRS 342.345 is amended to read as follows:

- 5 (1) Whenever an employer has complied with the provisions of KRS 342.340 relating  
 6 to individual self-insurance, the commissioner~~[executive-director]~~ shall issue to the  
 7 employer a certificate which shall remain in force for a period fixed by the  
 8 commissioner~~[executive-director]~~. But the commissioner~~[executive-director]~~ may,  
 9 upon at least ten (10) days' notice and a hearing to the employer, revoke or suspend  
 10 the certificate upon satisfactory evidence that revocation or suspension is  
 11 appropriate. If the commissioner~~[executive-director]~~ revokes a certificate, the  
 12 commissioner~~[executive-director]~~ may thereafter, upon petition of the employer and  
 13 a hearing, grant a new certificate, but the employer shall not, as a matter of right, be  
 14 entitled to a hearing for this purpose sooner than six (6) months following an order  
 15 of the commissioner~~[executive-director]~~ revoking the employer's certificate.

- 16 (2) A self-insurer whose certificate to self-insure has been revoked is not relieved of its  
 17 obligations for compensation to its employees for work-related injuries or  
 18 occupational diseases that occur during the period of self-insurance. The required  
 19 security shall be maintained with the commissioner~~[executive-director]~~ or under the  
 20 commissioner's~~[executive-director's]~~ control until each claim for workers'  
 21 compensation benefits has been paid, been settled, or lapsed under this chapter.

22 ➔Section 1823. KRS 342.347 is amended to read as follows:

- 23 (1) The commissioner~~[executive-director]~~ or the commissioner's~~[his]~~ designee shall  
 24 have power to examine the financial condition and affairs related to workers'  
 25 compensation of any individual self-insureds and shall have free access to books  
 26 and documents relating to the self-insurance activities of the entity. The  
 27 commissioner~~[executive-director]~~ shall so examine each individual self-insured not

1 less frequently than once every four (4) years. Information obtained through the  
2 examination shall be exempt from disclosure, under KRS 61.878(1)(j).

3 (2) All individual self-insured employers shall file with the commissioner~~executive~~  
4 ~~director~~] a statement of financial condition audited by an independent certified  
5 public accountant on or before one hundred twenty (120) days from the end of the  
6 self-insured's fiscal year for the immediately preceding fiscal year.

7 (3) The expense of examination shall be borne by the entity examined and shall include  
8 reasonable lodging and travel expenses of the commissioner's~~executive-director's~~  
9 designees, and expert assistance as necessarily incurred in the examination.

10 (4) The Department~~Office~~] of Insurance shall approve the form and contents of excess  
11 insurance policies and upon request of the commissioner~~executive-director~~] shall  
12 review the application for approval of any individual self-insured and render an  
13 opinion as to the sufficiency of the excess insurance policies or other security  
14 posted by the applicant.

15 (5) Not less often than biennially, the commissioner~~executive-director~~] of the  
16 Department~~Office~~] of Insurance shall review the activities, procedures,  
17 administrative regulations, and policies of the Department~~Office~~] of Workers'  
18 Claims and make such recommendations to the Governor and legislative  
19 committees as may be appropriate to strengthen the oversight of individual self-  
20 insureds so that payment of liabilities to workers under this chapter is assured.

21 ➔Section 1824. KRS 342.350 is amended to read as follows:

22 (1) In order to comply with KRS 342.340, groups of employers may form, either among  
23 themselves or with employers in other states, mutual insurance associations, or  
24 reciprocal or interinsurance exchanges subject to the insurance laws of this state and  
25 any reasonable conditions and restrictions not inconsistent therewith fixed by the  
26 commissioner~~executive-director~~]. Membership in these mutual insurance  
27 associations or reciprocal or interinsurance exchanges so approved, together with

1 evidence of the payment of premiums due, shall be evidence of compliance with  
2 KRS 342.340.

3 (2) The commissioner~~[executive director]~~ may, except as provided in subsection (3),  
4 require any mutual insurance association or reciprocal or interinsurance exchange to  
5 purchase an annuity or to effect reinsurance with a company authorized to transact  
6 insurance in this state or to make a deposit with a bank or trust company of this  
7 state that shall in either case be approved by the commissioner~~[executive director]~~  
8 for the purpose of fully securing the payment of all deferred installments upon any  
9 claim for compensation.

10 (3) Any mutual insurance association or reciprocal or interinsurance exchange  
11 possessing a surplus of at least one hundred thousand dollars (\$100,000) and not  
12 less in amount than the capital required of a domestic stock insurance company  
13 transacting the same kind of insurance shall not be required to purchase an annuity  
14 or effect reinsurance with a company authorized to transact insurance in this state or  
15 to make a deposit with a bank or trust company of this state for the purpose of fully  
16 securing the payment of all deferred installments upon any claim for compensation.

17 (4) In addition, under the provisions of KRS 304.50-010 and administrative regulations  
18 promulgated by the commissioner~~[executive director]~~ of the Department~~[Office]~~ of  
19 Insurance, twenty (20) or more employers with common interests or membership in  
20 a bona fide trade association or two (2) or more city, county, charter county, urban-  
21 county, or consolidated local government employers or their agencies may enter into  
22 agreements to pool their liabilities under this chapter for the purpose of qualifying  
23 as self-insured groups.

24 ➔Section 1825. KRS 342.352 is amended to read as follows:

25 (1) The commissioner~~[executive director]~~ may establish one (1) or more programs for  
26 interested employers of integrated management of an employer's workers'  
27 compensation and group health insurance claims by an insurer authorized to do

- 1 business in the Commonwealth and may promulgate any administrative regulations  
 2 necessary to implement the provisions of this subsection. The integrated  
 3 management of such claims shall in no event affect any benefits, rights, or coverage  
 4 established pursuant to a workers' compensation insurance policy. Treatment for  
 5 work-related conditions shall not be subject to either copayments or deductibles.  
 6 The commissioner~~[executive director]~~ shall make a report comparing the results of  
 7 each program to the expected results under traditional workers' compensation  
 8 insurance and traditional workers' compensation with a managed care program. The  
 9 program shall serve as a tentative model for future experiments.
- 10 (2) No policy for twenty-four (24) hour coverage shall become effective until it is  
 11 reviewed and approved by the commissioner~~[executive director]~~, in consultation  
 12 with the commissioner~~[executive director]~~ of the Department~~[Office]~~ of Insurance.
- 13 (3) The purchase of a twenty-four (24) hour health policy shall not constitute an  
 14 exemption from statutory provisions which require other nonmedical insurance  
 15 coverage. However, an insurance carrier shall reduce its premium for insurance  
 16 coverage written without the medical or health care component. Notwithstanding  
 17 the provisions of Subtitle 13 of KRS Chapter 304, the premium reduction required  
 18 in this subsection shall be subject to the approval of the commissioner~~[executive~~  
 19 ~~director]~~ of the Department~~[Office]~~ of Insurance.
- 20 (4) If an employer obtains a twenty-four (24) hour health insurance policy, pursuant to  
 21 this section, to secure payment of compensation for medical care and treatment  
 22 under this chapter, the employer shall also procure an insurance policy which shall  
 23 provide indemnity benefits to ensure that the total coverage afforded by both the  
 24 twenty-four (24) hour insurance policy and the policy providing indemnity benefits  
 25 shall provide the total compensation required by this chapter.
- 26 (5) The participants in a project for twenty-four (24) hour health coverage shall comply  
 27 with periodic reporting requirements of the commission.

1 (6) Each agency of state government shall cooperate with the commissioner~~executive~~  
2 ~~director~~ if requested to provide information for the purposes of this section.

3 ➔Section 1826. KRS 342.375 is amended to read as follows:

4 Every policy or contract of workers' compensation insurance under this chapter, issued or  
5 delivered in this state, shall cover the entire liability of the employer for compensation to  
6 each employee subject to this chapter, except as otherwise provided in KRS 216.2960,  
7 342.020, 342.345, or 342.352. However, if specifically authorized by the  
8 commissioner~~executive director~~, a separate insurance policy may be issued for a  
9 specified plant or work location if the liability of the employer under this chapter to each  
10 employee subject to this chapter is otherwise secured and provided that no employee  
11 transferred from one plant or work location to another within the employment of the same  
12 employer shall thereby lose any benefit rights accumulated under the average weekly  
13 wage concept.

14 ➔Section 1827. KRS 342.380 is amended to read as follows:

15 No policy of insurance or rider to be used therewith shall be issued or delivered until a  
16 copy of its form has been filed with the commissioner~~executive director~~ of the  
17 Department~~Office~~ of Insurance at least thirty (30) days before such issue or delivery,  
18 unless before the expiration of thirty (30) days the commissioner~~executive director~~ of  
19 the Department~~Office~~ of Insurance has approved the form thereof in writing; nor if the  
20 commissioner~~executive director~~ of the Department~~Office~~ of Insurance notifies the  
21 company in writing that in his opinion the form of the policy or rider does not comply  
22 with the laws of this state, specifying fully the reasons for his opinion. Upon petition of  
23 the company, the decision of the commissioner~~executive director~~ of the  
24 Department~~Office~~ of Insurance shall be subject to review by the Franklin Circuit Court  
25 and to appeal therefrom to the Court of Appeals.

26 ➔Section 1828. KRS 342.382 is amended to read as follows:

27 (1) Any insurer authorized to write a policy of workers' compensation insurance shall



1 transmit the following information on its workers' compensation experience only to  
2 the Department~~{Office}~~ of Workers' Claims and the Workers' Compensation  
3 Advisory Council each year, and that information shall be certified and reported on  
4 a net basis with respect to reinsurance for nationwide experience and direct basis  
5 with respect to Kentucky experience:

- 6 (a) Direct premiums written;
- 7 (b) Direct premiums earned;
- 8 (c) Dividends paid or credited to policyholders;
- 9 (d) Losses paid;
- 10 (e) Allocated loss adjustment expenses;
- 11 (f) The ratio of allocated loss adjustment expenses to losses paid;
- 12 (g) Unallocated loss adjustment expenses;
- 13 (h) The ratio of unallocated loss adjustment expenses to losses paid;
- 14 (i) The total of losses paid and unallocated and allocated loss adjustment  
15 expenses;
- 16 (j) The ratio of losses paid and unallocated and allocated loss adjustment  
17 expenses to premiums earned;
- 18 (k) The number of claims outstanding as of December 31 of each year;
- 19 (l) The total amount of losses unpaid as of December 31 of each year;
- 20 (m) The total amount of allocated and unallocated loss adjustment expenses  
21 unpaid as of December 31 of each year;
- 22 (n) The total of losses paid and allocated loss adjustment expenses and  
23 unallocated loss adjustment expenses, plus the total of losses unpaid as of  
24 December 31 of each year and loss adjustment expenses unpaid as of  
25 December 31 of each year; and
- 26 (o) Net investment gain or loss.

27 (2) The first report of the information required in subsection (1) of this section shall

1 include the information for the year ending December 31, 1987. Such report shall be  
 2 filed no later than August 1, 1988. Beginning with the report for the period ending  
 3 December 31, 1989, all future reports shall have all information required by  
 4 subsection (1) of this section broken down by year for the current and two (2)  
 5 preceding years.

6 ➔Section 1829. KRS 342.395 is amended to read as follows:

- 7 (1) Where an employer is subject to this chapter, then every employee of that employer,  
 8 as a part of his or her contract of hiring or who may be employed at the time of the  
 9 acceptance of the provisions of this chapter by the employer, shall be deemed to  
 10 have accepted all the provisions of this chapter and shall be bound thereby unless he  
 11 or she shall have filed, prior to the injury or incurrence of occupational disease,  
 12 written notice to the contrary with the employer; and the acceptance shall include all  
 13 of the provisions of this chapter with respect to traumatic personal injury, silicosis,  
 14 and any other occupational disease. However, before an employee's written notice  
 15 of rejection shall be considered effective, the employer shall file the employee's  
 16 notice of rejection with the Department~~Office~~ of Workers' Claims. The  
 17 commissioner~~executive-director~~ of that department~~office~~ shall not give effect to  
 18 any rejection of this chapter not voluntarily made by the employee. If an employee  
 19 withdraws his or her rejection, the employer shall notify the  
 20 commissioner~~executive-director~~.
- 21 (2) An employer shall not require an employee to execute a rejection of this chapter as  
 22 either a condition to obtain employment or a condition to maintain employment. An  
 23 employer shall not terminate an employee for refusal to execute a rejection of this  
 24 chapter.
- 25 (3) Until notice to the contrary as specified in subsection (1) of this section is given to  
 26 the employer, the measure of liability of the employer shall be determined according  
 27 to the compensation provisions of this chapter. Any employee, may, without

1 prejudice to any existing right or claim, withdraw his election to reject this chapter  
 2 by filing with the employer a written notice of withdrawal, stating the date when the  
 3 withdrawal is to become effective. Following the filing of that notice, the status of  
 4 the party withdrawing shall become the same as if the former election to reject this  
 5 chapter had not been made, except that withdrawal shall not be effective as to any  
 6 injury sustained or disease incurred less than one (1) week after the notice is filed.

7 ➔Section 1830. KRS 342.402 is amended to read as follows:

8 The commissioner~~{executive-director}~~, upon showing a certification of noncompliance,  
 9 may temporarily restrain or temporarily or permanently enjoin the further operation of any  
 10 employer covered by this chapter. The action shall be brought in Franklin Circuit Court.

11 ➔Section 1831. KRS 342.425 is amended to read as follows:

12 Upon the request of the commissioner~~{executive-director}~~, the Attorney General, or,  
 13 under his or her direction, the Commonwealth's attorney or county attorney of any  
 14 county, shall institute and prosecute the necessary actions or proceedings for the  
 15 enforcement of any of the provisions of this chapter arising within his or her jurisdiction,  
 16 and shall defend in like manner all actions or proceedings brought against the  
 17 department~~{office}~~, the employees thereof, board members, or administrative law judges  
 18 in their official capacity.

19 ➔Section 1832. KRS 342.430 is amended to read as follows:

20 The commissioner~~{executive-director}~~ shall prepare and furnish, free of charge, blank  
 21 forms of all notices, claims, reports, proofs, and other blank forms and literature which he  
 22 or she considers proper and requisite to the efficient administration of this chapter. He or  
 23 she may authorize the publication and distribution of these blanks by employers and their  
 24 insurers in manner and form provided by him or her, and shall promulgate administrative  
 25 regulations for their distribution so that they may be readily available.

26 ➔Section 1833. KRS 342.435 is amended to read as follows:

27 Annually on or before the fifteenth day of December, the commissioner~~{executive~~

1 ~~director~~] shall make a report to the Governor for the preceding fiscal year, which shall  
 2 include a statement of the number of awards made and of claims rejected by the board  
 3 and each administrative law judge, a general statement of the causes of accident leading  
 4 to the injuries for which awards were made or rejected claims based, together with any  
 5 other information which the commissioner~~executive director~~] deems proper to call to the  
 6 attention of the Governor, including any recommendations he may have to make, and it  
 7 shall be the duty of the commissioner~~executive director~~] to publish and distribute among  
 8 employers and employees any general information as to the business transacted by the  
 9 department~~office~~] as may be useful and necessary. The annual report shall not exceed  
 10 ten thousand (10,000) copies. All printing of the department~~office~~] shall be done by the  
 11 contractor or contractors for public printing, subject to the provisions of the general laws  
 12 governing public printing applicable thereto.

13 ➔Section 1834. KRS 342.447 is amended to read as follows:

- 14 (1) All funds collected by insurance companies from their insureds, prior to October 26,  
 15 1987, for assessments of the Kentucky Reinsurance Association or special fund  
 16 taxes and assessments of the Kentucky Department of Revenue not previously paid,  
 17 shall be paid in full by January 1, 1988, to the Kentucky Workers' Compensation  
 18 Funding Commission.
- 19 (2) To ensure compliance with the provisions of subsection (1) of this section, the  
 20 Department of Revenue shall conduct audits of insurance companies. The costs of  
 21 such audits shall be borne by the Kentucky Workers' Compensation Funding  
 22 Commission. The Department of Revenue may enter an agreement with the  
 23 Department~~Office~~] of Insurance for assistance in conducting such audits or it may  
 24 hire additional auditors on a temporary basis. The audits shall commence within  
 25 sixty (60) days from October 26, 1987, and shall be completed within six (6)  
 26 months. The aggregate findings of such audits shall be presented to the  
 27 commissioner of revenue, the commissioner~~executive director~~] of insurance, the

1 Kentucky Workers' Compensation Funding Commission, and the Governor.

2 (3) If the audits reveal noncompliance with subsection (1) of this section, the  
3 Department of Revenue shall notify the affected party of such fact. The affected  
4 party shall remit the amount in question not later than thirty (30) days following  
5 notification and the Department of Revenue shall institute a civil action in Franklin  
6 Circuit Court if remittance is not made within such thirty (30) day period.

7 (4) The failure of an insurance company to comply with the provisions of this section  
8 shall constitute grounds for the revocation by the commissioner~~executive director~~  
9 of insurance of such entity's authority to write workers' compensation coverage in  
10 the Commonwealth.

11 (5) The Department of Revenue shall report to the commissioner~~executive director~~ of  
12 insurance the failure of any insurance company to comply with the provisions of  
13 this section and the commissioner~~executive director~~ of insurance shall institute  
14 revocation procedures of such entity's authority to write workers' compensation  
15 coverage in the Commonwealth.

16 (6) "Funds collected" as used in subsection (1) of this section shall mean all funds  
17 collected without reduction for credits, refund, or returns of any type made to  
18 insureds or group members after September 1, 1987.

19 ➔Section 1835. KRS 342.610 is amended to read as follows:

20 (1) Every employer subject to this chapter shall be liable for compensation for injury,  
21 occupational disease, or death without regard to fault as a cause of the injury,  
22 occupational disease, or death.

23 (2) A contractor who subcontracts all or any part of a contract and his or her carrier  
24 shall be liable for the payment of compensation to the employees of the  
25 subcontractor unless the subcontractor primarily liable for the payment of such  
26 compensation has secured the payment of compensation as provided for in this  
27 chapter. Any contractor or his or her carrier who shall become liable for such

1 compensation may recover the amount of such compensation paid and necessary  
 2 expenses from the subcontractor primarily liable therefor. A person who contracts  
 3 with another:

4 (a) To have work performed consisting of the removal, excavation, or drilling of  
 5 soil, rock, or mineral, or the cutting or removal of timber from land; or

6 (b) To have work performed of a kind which is a regular or recurrent part of the  
 7 work of the trade, business, occupation, or profession of such person

8 shall for the purposes of this section be deemed a contractor, and such other person  
 9 a subcontractor. This subsection shall not apply to the owner or lessee of land  
 10 principally used for agriculture.

11 (3) Liability for compensation shall not apply where injury, occupational disease, or  
 12 death to the employee was proximately caused primarily by voluntary intoxication  
 13 as defined in KRS 501.010, or by his or her willful intention to injure or kill  
 14 himself, herself, or another.

15 (4) If injury or death results to an employee through the deliberate intention of his or  
 16 her employer to produce such injury or death, the employee or the employee's[his]  
 17 dependent as herein defined shall receive the amount provided in this chapter in a  
 18 lump sum to be used, if desired, to prosecute the employer. The dependents may  
 19 bring suit against the employer for any amount they desire. If injury or death results  
 20 to an employee through the deliberate intention of his or her employer to produce  
 21 such injury or death, the employee or the employee's[his] dependents may take  
 22 under this chapter, or in lieu thereof, have a cause of action at law against the  
 23 employer as if this chapter had not been passed, for such damage so sustained by the  
 24 employee, his dependents or personal representatives as is recoverable at law. If a  
 25 suit is brought under this subsection, all right to compensation under this chapter  
 26 shall thereby be waived as to all persons. If a claim is made for the payment of  
 27 compensation or any other benefit provided by this chapter, all rights to sue the

1 employer for damages on account of such injury or death shall be waived as to all  
2 persons.

3 (5) Prior to issuing any building permit pursuant to KRS 198B.060(10), every local  
4 building official shall require proof of workers' compensation coverage from the  
5 builder before a permit is issued. A person who is exempt under the exception  
6 contained in KRS 342.650(2), and any contractor otherwise exempt from this  
7 chapter, shall so certify to the local building official, in writing and on a form  
8 prescribed by the commissioner~~[executive-director]~~, in lieu of providing proof of  
9 workers' compensation coverage.

10 (6) Every employer subject to this chapter, at its principal office and such other  
11 locations where employees customarily report for payroll and personnel matters,  
12 shall post a notice stating the name of its workers' compensation insurance carrier  
13 and policy number, setting forth the means to access medical care for injuries, the  
14 employee's obligation to give notice of accidents, and such other matters concerning  
15 the employee's rights under this chapter as may be required by the  
16 commissioner~~[executive-director]~~ so as to afford every employee the opportunity to  
17 become informed about the employer's workers' compensation program. The format  
18 and contents of the notice shall be established by the commissioner~~[executive~~  
19 ~~director]~~ through administrative regulation, and copies shall be provided to the  
20 employer by its insurance carrier.

21 ➔Section 1836. KRS 342.615 is amended to read as follows:

22 (1) As used in this section:

23 (a) "Employee leasing company" or "lessor" means an entity that grants a written  
24 lease to a lessee pursuant to an employee leasing arrangement.

25 (b) "Lessee" means an employer that obtains all or part of its workforce from  
26 another entity through an employee leasing arrangement.

27 (c) "Leased employee" means a person performing services for a lessee under an

1 employee leasing arrangement.

2 (d) "Employee leasing arrangement" means an arrangement under contract or  
 3 otherwise whereby the lessee leases all or some of its workers from an  
 4 employee leasing company. Employee leasing arrangements include, but are  
 5 not limited to, full-service employee leasing arrangements, long-term  
 6 temporary arrangements, and any other arrangement which involves the  
 7 allocation of employment responsibilities among two (2) or more entities. For  
 8 purposes of this section, "employee leasing arrangement" does not include  
 9 arrangements to provide temporary workers.

10 (e) "Temporary worker" means a worker who is furnished to an entity to  
 11 substitute for a permanent employee on leave or to meet seasonal or short-  
 12 term workload conditions for a finite period of time.

13 (f) "Temporary help service" means a service whereby an organization hires its  
 14 own employees and assigns those employees to clients for finite periods of  
 15 time to support or supplement the client's workforce in special work  
 16 situations, including employee absences, temporary skill shortages, and  
 17 seasonal workloads.

18 (2) A corporation, partnership, sole proprietorship, or other business entity which acts  
 19 as an employee leasing company shall register with the commissioner~~executive~~  
 20 ~~director~~ in the manner as prescribed by administrative regulations.

21 (3) Any lessor of employees whose workers' compensation insurance has been  
 22 terminated within the past five (5) years in any jurisdiction due to a determination  
 23 that an employee leasing arrangement was being utilized to avoid premiums, taxes,  
 24 or assessments otherwise payable by lessees shall be ineligible to register with the  
 25 commissioner~~executive director~~ or to remain registered, if previously registered.

26 (4) A lessee shall fulfill its statutory responsibility to secure benefits for leased  
 27 employees under this chapter by purchasing and maintaining a standard workers'



1 compensation policy approved by the commissioner~~executive director~~ of the  
 2 Department~~Office~~ of Insurance. A lessee may fulfill that responsibility by  
 3 contracting with an employee leasing company to purchase and maintain the  
 4 required insurance policy. In either event, it shall be the responsibility of the lessee  
 5 to maintain in its files at all times the certificate of insurance, or a copy thereof,  
 6 evidencing the existence of the required insurance. The exposure and experience of  
 7 the lessee shall be used in determining the premium for the policy and shall include  
 8 coverage for all leased employees.

- 9 (5) A temporary help service shall be deemed the employer of a temporary worker and  
 10 shall be subject to the provisions of this chapter.

11 ➔Section 1837. KRS 342.650 is amended to read as follows:

12 The following employees are exempt from the coverage of this chapter:

- 13 (1) Any person employed as a domestic servant in a private home by an employer who  
 14 has less than two (2) employees each regularly employed forty (40) or more hours a  
 15 week in domestic servant employment.
- 16 (2) Any person employed, for not exceeding twenty (20) consecutive work days, to do  
 17 maintenance, repair, remodeling, or similar work in or about the private home of the  
 18 employer, or if the employer has no other employees subject to this chapter, in or  
 19 about the premises where that employer carries on his or her trade, business, or  
 20 profession.
- 21 (3) Any person performing services in return for aid or sustenance only, received from  
 22 any religious or charitable organization.
- 23 (4) Any person for whom a rule of liability for injury or death is provided by the laws  
 24 of the United States, except those persons covered under Title IV, Public Law 91-  
 25 173, 91st Congress, commonly referred to as the Black Lung Benefits of the Federal  
 26 Coal Mine Health and Safety Act of 1969, or as amended.
- 27 (5) Any person employed in agriculture.

1 (6) Any person who would otherwise be covered but who elects not to be covered in  
 2 accordance with the administrative regulations promulgated by the  
 3 commissioner~~[executive director]~~.

4 (7) Any person participating as a driver or passenger in a voluntary vanpool or carpool  
 5 program while that person is on the way to or from his or her place of employment.  
 6 For the purposes of this subsection, carpool or vanpool means any method by which  
 7 two (2) or more employees are transported from their residences to their places of  
 8 employment.

9 (8) Members of a religious sect or division that is an adherent of established tenets or  
 10 teachings by reason of which members are conscientiously opposed to acceptance of  
 11 the benefits of any public or private insurance which makes payments in the event  
 12 of death, disability, old age, or retirement, or makes payments toward the cost of, or  
 13 provides services for, medical bills, including the benefits of any insurance system  
 14 established by the Federal Social Security Act, 42 U.S.C. secs. 301 et seq., and it is  
 15 the practice, and has been for ten (10) or more years, for members of the sect or  
 16 division to make reasonable provision for their dependent members.

17 ➔Section 1838. KRS 342.660 is amended to read as follows:

18 (1) An employer ~~that~~~~[who]~~ has in ~~its~~~~[his]~~ employment any employee exempted under  
 19 KRS 342.650 may elect to be subject to this chapter. This election on the part of the  
 20 employer shall be made by the employer securing the payment of compensation to  
 21 these exempted employees in accordance with KRS 342.340. Any employee,  
 22 otherwise exempted under KRS 342.650, of the employer shall be deemed to have  
 23 elected to come under this chapter, if at the time of the injury for which liability is  
 24 claimed, his or her employer has in force an election to be subject to this chapter  
 25 with respect to the employment in which the employee was injured and the  
 26 employee has not, either upon entering into employment or within five (5) days  
 27 after the filing of an election by the employer, given to his or her employer and to

1 the commissioner~~[executive director]~~ notice in writing that he or she elects not to  
2 be subject to this chapter.

3 (2) An employer within the scope of subsection (1) of this section, within five (5) days  
4 after securing the payment of compensation in accordance with KRS 342.340, shall  
5 give the commissioner~~[executive director]~~ written notice of its~~[his]~~ election to be  
6 subject to this chapter. The employer shall post and keep posted on the premises  
7 where any employee or employees, otherwise exempted under KRS 342.650, works,  
8 printed notices furnished by the commissioner~~[executive director]~~ stating its~~[his]~~  
9 acceptance of this chapter. Failure to give the notices required by this paragraph  
10 shall not void or impair the employer's election to be subject to or relieve it~~[him]~~ of  
11 any liability under this chapter.

12 (3) Any employer who has complied with subsection (2) of this section may withdraw  
13 its~~[his]~~ acceptance of this chapter, by filing written notice with the  
14 commissioner~~[executive director]~~ of the withdrawal of its~~[his]~~ acceptance. A  
15 withdrawal shall become effective 60 days after the filing of notice or on the date of  
16 the termination of the security for payment of compensation, whichever last occurs.  
17 The withdrawal shall not be effective until the employer shall theretofore post  
18 notice of the withdrawal where the affected employee or employees work or shall  
19 otherwise notify the employees of withdrawal.

20 ➔Section 1839. KRS 342.670 is amended to read as follows:

21 (1) If an employee, while working outside the territorial limits of this state, suffers an  
22 injury on account of which the employee~~[he]~~, or in the event of the employee's~~[his]~~  
23 ~~]death, his~~ or her dependents, would have been entitled to the benefits provided by  
24 this chapter had that injury occurred within this state, that employee, or in the event  
25 of the employee's~~[his]~~ death resulting from that injury, his or her dependents, shall  
26 be entitled to the benefits provided by this chapter, if at the time of the injury:

27 (a) His or her employment is principally localized in this state~~;~~ or

- 1 (b) He or she is working under a contract of hire made in this state in  
 2 employment not principally localized in any state;[,] or
- 3 (c) He or she is working under a contract of hire made in this state in  
 4 employment principally localized in another state whose workers'  
 5 compensation law is not applicable to his or her employer;[,] or
- 6 (d) He or she is working under a contract of hire made in this state for  
 7 employment outside the United States and Canada.
- 8 (2) The payment or award of benefits under the workers' compensation law of another  
 9 state, territory, province, or foreign nation to an employee or his or her dependents  
 10 otherwise entitled on account of such injury or death to the benefits of this chapter  
 11 shall not be a bar to a claim for benefits under this chapter, if a claim under this  
 12 chapter is filed within two (2) years after that injury or death. If compensation is  
 13 paid or awarded under this chapter:
- 14 (a) The medical and related benefits furnished or paid for by the employer under  
 15 another jurisdiction's workers' compensation law on account of such injury or  
 16 death shall be credited against the medical and related benefits to which the  
 17 employee would have been entitled under this chapter had claim been made  
 18 solely under this chapter;
- 19 (b) The total amount of all income benefits paid or awarded the employee under  
 20 another jurisdiction's workers' compensation law shall be credited against the  
 21 total amount of income benefits which would have been due the employee  
 22 under this chapter, had claim been made solely under this chapter; and
- 23 (c) The total amount of death benefits paid or awarded under another  
 24 jurisdiction's workers' compensation law shall be credited against the total  
 25 amount of death benefits due under this chapter.
- 26 (3) If any employee is entitled to the benefits of this chapter by reason of an injury  
 27 sustained in this state in employment by an employer who is domiciled in another

1 state and who has not secured the payment of compensation as required by this  
 2 chapter, the employer or his carrier may file with the commissioner~~executive~~  
 3 ~~director~~] a certificate, issued by the commission or agency of the other state having  
 4 jurisdiction over workers' compensation claims, certifying that the employer has  
 5 secured the payment of compensation under the workers' compensation law of the  
 6 other state and that with respect to the injury the employee is entitled to the benefits  
 7 provided under that law, and that the benefits to which the employee or his or her  
 8 dependents is entitled are at least as great as those to which he or she would be  
 9 entitled if the injury occurred and was processed under Kentucky law, under  
 10 Kentucky coverage. In this event:

11 (a) The filing of the certificate shall constitute an appointment by the employer or  
 12 his carrier of the commissioner~~executive director~~] as his or her agent for  
 13 acceptance of the service of process in any proceeding brought by the  
 14 employee or his or her dependents to enforce his, her, or their rights under  
 15 this chapter on account of the injury;

16 (b) The commissioner~~executive director~~] shall send to the employer or carrier,  
 17 by certified mail to the address shown on the certificate, a true copy of any  
 18 notice of claim or other process served on the commissioner~~executive~~  
 19 ~~director~~] by the employee or his or her dependents in any proceeding brought  
 20 to enforce his, her, or their rights under this chapter;

21 (c) 1. If the employer is a qualified self-insurer under the workers'  
 22 compensation law of the other state, the employer shall, upon  
 23 submission of evidence satisfactory to the commissioner~~executive~~  
 24 ~~director~~], of its~~his~~] ability to meet its~~his~~] liability to the employee  
 25 under this chapter, be deemed to be a qualified self-insurer under this  
 26 chapter;

27 2. If the employer's liability under the workers' compensation law of the

1 other state is insured, the employer's carrier, as to the employee or his or  
 2 her dependents only, shall be deemed to be an insurer authorized to  
 3 write insurance under and be subject to this chapter; however, unless its  
 4 contract with the employer requires it to pay an amount equivalent to the  
 5 compensation benefits provided by this chapter, its liability for income  
 6 benefits or medical and related benefits shall not exceed the amounts of  
 7 the benefits for which the insurer would have been liable under the  
 8 workers' compensation law of the other state;

9 (d) If the total amount for which the employer's insurance is liable under (c)  
 10 above is less than the total of the compensation benefits to which the  
 11 employee is entitled under this chapter, the commissioner~~[executive director]~~  
 12 may, if he or she deems it necessary, require the employer to file security,  
 13 satisfactory to the commissioner~~[executive director]~~, to secure the payment of  
 14 benefits due the employee or his or her dependents under this chapter; and

15 (e) Upon compliance with the preceding requirements of this subsection (3), the  
 16 employer, as to the employee only, shall be deemed to have secured the  
 17 payment of compensation under this chapter.

18 (4) Any professional athlete, coach, or trainer who has been hired outside this  
 19 Commonwealth by an employer domiciled in a foreign state, including professional  
 20 baseball, basketball, football, and ice-hockey clubs, is exempted from the provisions  
 21 of this chapter while that employee is temporarily within this Commonwealth doing  
 22 work for the employer, if the foreign employer has secured workers' compensation  
 23 insurance coverage under the workers' compensation law of the foreign state, so as  
 24 to cover the employee's employment while in this Commonwealth. The benefits  
 25 under the workers' compensation law of the foreign state shall be the exclusive  
 26 remedy against that employer and any affiliated club for any injury, whether  
 27 resulting in death or not, received by any employee while working for that employer

1 in this Commonwealth.

2 (5) As used in this section:

3 (a) "United States" includes only the states of the United States and the District of  
4 Columbia;

5 (b) "State" includes any state of the United States, the District of Columbia, or  
6 any province of Canada;

7 (c) "Carrier" includes any insurance company licensed to write workers'  
8 compensation insurance in any state of the United States or any state or  
9 provincial fund which insures employers against their liabilities under a  
10 workers' compensation law;

11 (d) A person's employment is principally localized in this or another state when:

- 12 1. His or her employer has a place of business in this or the other state and  
13 he or she regularly works at or from that place of business, or
- 14 2. If subparagraph 1. foregoing is not applicable, he or she is domiciled  
15 and spends a substantial part of his or her working time in the service of  
16 his or her employer in this or the other state;

17 (e) An employee whose duties require him or her to travel regularly in the service  
18 of his or her employer in this and one (1) or more other states may, by written  
19 agreement with his or her employer, provide that his or her employment is  
20 principally localized in this or another state, and, unless the other state refuses  
21 jurisdiction, the agreement shall be given effect under this chapter;

22 (f) "Workers' compensation law" includes "occupational disease law."

23 ➔Section 1840. KRS 342.710 is amended to read as follows:

24 (1) One of the primary purposes of this chapter shall be restoration of the injured  
25 employee to gainful employment, and preference shall be given to returning the  
26 employee to employment with the same employer or to the same or similar  
27 employment.

- 1 (2) The commissioner~~executive director~~ shall continuously study the problems of  
2 rehabilitation, both physical and vocational, and shall investigate and maintain a  
3 directory of all rehabilitation facilities, both private and public.
- 4 (3) An employee who has suffered an injury covered by this chapter shall be entitled to  
5 prompt medical rehabilitation services for whatever period of time is necessary to  
6 accomplish physical rehabilitation goals which are feasible, practical, and  
7 justifiable. When as a result of the injury he or she is unable to perform work for  
8 which he or she has previous training or experience, he or she shall be entitled to  
9 such vocational rehabilitation services, including retraining and job placement, as  
10 may be reasonably necessary to restore him or her to suitable employment. In all  
11 such instances, the administrative law judge shall inquire whether such services  
12 have been voluntarily offered and accepted. The administrative law judge on his or  
13 her own motion, or upon application of any party or carrier, after affording the  
14 parties an opportunity to be heard, may refer the employee to a qualified physician  
15 or facility for evaluation of the practicability of, need for, and kind of service,  
16 treatment, or training necessary and appropriate to render him or her fit for a  
17 remunerative occupation. Upon receipt of such report, the administrative law judge  
18 may order that the services and treatment recommended in the report, or such other  
19 rehabilitation treatment or service likely to return the employee to suitable, gainful  
20 employment, be provided at the expense of the employer or its~~his~~ insurance  
21 carrier. Vocational rehabilitation training, treatment, or service shall not extend for  
22 a period of more than fifty-two (52) weeks, except in unusual cases when by special  
23 order of the administrative law judge, after hearing and upon a finding, determined  
24 by sound medical evidence which indicates such further rehabilitation is feasible,  
25 practical, and justifiable, the period may be extended for additional periods.
- 26 (4) Where rehabilitation requires residence at or near the facility or institution, away  
27 from the employee's customary residence, reasonable cost of his or her board,



- 1 lodging, or travel shall be paid for by the employer or ~~its~~~~his~~ insurance carrier.
- 2 (5) Refusal to accept rehabilitation pursuant to an order of an administrative law judge  
3 shall result in a fifty percent (50%) loss of compensation for each week of the  
4 period of refusal.
- 5 (6) The commissioner~~executive director~~ shall cooperate on a reciprocal basis with the  
6 Office of Vocational Rehabilitation and the Office of Employment and Training of  
7 the Education and Workforce Development Cabinet. In the event medical treatment,  
8 medical rehabilitation services, or vocational rehabilitation services are purchased  
9 for an injured employee by the Office of Vocational Rehabilitation or Office of  
10 Employment and Training following the refusal by the employer or ~~its~~~~his~~  
11 insurance carrier to provide such services, the administrative law judge, after  
12 affording the parties an opportunity to be heard, may order reimbursement of the  
13 cost of such treatment or services by the employer or ~~its~~~~his~~ insurance carrier as  
14 apportioned in the award. This section shall not be interpreted to require mandatory  
15 evaluation of employees based on length of disability. Any administrative  
16 regulations promulgated pursuant to this section that require mandatory referral to a  
17 qualified rehabilitation counselor shall expire on April 4, 1994.
- 18 (7) An employee who is enrolled and participating in a program of rehabilitation  
19 training pursuant to this section may elect to receive an acceleration of benefits as  
20 awarded under KRS 342.730. Such acceleration shall be available to the employee  
21 during the period of retraining, but in no event shall be paid in a weekly amount  
22 greater than sixty-six and two-thirds percent (66-2/3%) of the average weekly wage  
23 upon which the award is based, not to exceed one hundred percent (100%) of the  
24 state average weekly wage. Upon successful completion of the rehabilitation  
25 program, the total of all accelerated benefits paid shall be deducted on a dollar-for-  
26 dollar basis, without discount, from weekly benefits otherwise due the employee  
27 subject to the maximum amount of the award. Such remaining benefits, if any, shall

1 then be divided by the number of weeks remaining payable under the award, and  
 2 that amount shall be the weekly benefit due the employee. If a program of  
 3 rehabilitation training is terminated by the employee prior to completion, all sums  
 4 paid on an accelerated basis shall be discounted at the rate set forth in KRS 342.265  
 5 and then deducted on a dollar-for-dollar basis from weekly benefits otherwise due  
 6 the employee subject to the maximum amount of the award. Such remaining  
 7 benefits, after the discount, shall be divided by the number of weeks remaining  
 8 payable under the award, and that amount shall be the weekly benefit due the  
 9 employee. In no event shall this subsection be construed as requiring payment of  
 10 benefits in excess of the total of those benefits which would otherwise be payable  
 11 under the award.

12 ➔Section 1841. KRS 342.730 is amended to read as follows:

13 (1) Except as provided in KRS 342.732, income benefits for disability shall be paid to  
 14 the employee as follows:

15 (a) For temporary or permanent total disability, sixty-six and two-thirds percent  
 16 (66-2/3%) of the employee's average weekly wage but not more than one  
 17 hundred percent (100%) of the state average weekly wage and not less than  
 18 twenty percent (20%) of the state average weekly wage as determined in KRS  
 19 342.740 during that disability. Nonwork-related impairment and conditions  
 20 compensable under KRS 342.732 and hearing loss covered in KRS 342.7305  
 21 shall not be considered in determining whether the employee is totally  
 22 disabled for purposes of this subsection.

23 (b) For permanent partial disability, sixty-six and two-thirds percent (66-2/3%) of  
 24 the employee's average weekly wage but not more than seventy-five percent  
 25 (75%) of the state average weekly wage as determined by KRS 342.740,  
 26 multiplied by the permanent impairment rating caused by the injury or  
 27 occupational disease as determined by "Guides to the Evaluation of Permanent

Impairment," American Medical Association, latest edition available, times the factor set forth in the table that follows:

AMA Impairment	Factor
0 to 5%	0.65
6 to 10%	0.85
11 to 15%	1.00
16 to 20%	1.00
21 to 25%	1.15
26 to 30%	1.35
31 to 35%	1.50
36% and above	1.70

Any temporary total disability period within the maximum period for permanent, partial disability benefits shall extend the maximum period but shall not make payable a weekly benefit exceeding that determined in subsection (1)(a) of this section. Notwithstanding any section of this chapter to the contrary, there shall be no minimum weekly income benefit for permanent partial disability and medical benefits shall be paid for the duration of the disability.

- (c) 1. If, due to an injury, an employee does not retain the physical capacity to return to the type of work that the employee performed at the time of injury, the benefit for permanent partial disability shall be multiplied by three (3) times the amount otherwise determined under paragraph (b) of this subsection, but this provision shall not be construed so as to extend the duration of payments; or
2. If an employee returns to work at a weekly wage equal to or greater than the average weekly wage at the time of injury, the weekly benefit for permanent partial disability shall be determined under paragraph (b) of

1           this subsection for each week during which that employment is  
 2           sustained. During any period of cessation of that employment, temporary  
 3           or permanent, for any reason, with or without cause, payment of weekly  
 4           benefits for permanent partial disability during the period of cessation  
 5           shall be two (2) times the amount otherwise payable under paragraph (b)  
 6           of this subsection. This provision shall not be construed so as to extend  
 7           the duration of payments.

8           3. Recognizing that limited education and advancing age impact an  
 9           employee's post-injury earning capacity, an education and age factor,  
 10          when applicable, shall be added to the income benefit multiplier set  
 11          forth in paragraph (c)1. of this subsection. If at the time of injury, the  
 12          employee had less than eight (8) years of formal education, the  
 13          multiplier shall be increased by four-tenths (0.4); if the employee had  
 14          less than twelve (12) years of education or a high school General  
 15          Educational Development diploma, the multiplier shall be increased by  
 16          two-tenths (0.2); if the employee was age sixty (60) or older, the  
 17          multiplier shall be increased by six-tenths (0.6); if the employee was age  
 18          fifty-five (55) or older, the multiplier shall be increased by four-tenths  
 19          (0.4); or if the employee was age fifty (50) or older, the multiplier shall  
 20          be increased by two-tenths (0.2).

21          4. Notwithstanding the provisions of KRS 342.125, a claim may be  
 22          reopened at any time during the period of permanent partial disability in  
 23          order to conform the award payments with the requirements of  
 24          subparagraph 2. of this paragraph.

25          (d) For permanent partial disability, if an employee has a permanent disability  
 26          rating of fifty percent (50%) or less as a result of a work-related injury, the  
 27          compensable permanent partial disability period shall be four hundred twenty-

1 five (425) weeks, and if the permanent disability rating is greater than fifty  
2 percent (50%), the compensable permanent partial disability period shall be  
3 five hundred twenty (520) weeks from the date the impairment or disability  
4 exceeding fifty percent (50%) arises. Benefits payable for permanent partial  
5 disability shall not exceed ninety-nine percent (99%) of sixty-six and two-  
6 thirds percent ( $66\frac{2}{3}\%$ ) of the employee's average weekly wage as  
7 determined under KRS 342.740 and shall not exceed seventy-five percent  
8 (75%) of the state average weekly wage, except for benefits payable pursuant  
9 to paragraph (c)1. of this subsection, which shall not exceed one hundred  
10 percent (100%) of the state average weekly wage, nor shall benefits for  
11 permanent partial disability be payable for a period exceeding five hundred  
12 twenty (520) weeks, notwithstanding that multiplication of impairment times  
13 the factor set forth in paragraph (b) of this subsection would yield a greater  
14 percentage of disability.

15 (e) For permanent partial disability, impairment for nonwork-related disabilities,  
16 conditions previously compensated under this chapter, conditions covered by  
17 KRS 342.732, and hearing loss covered in KRS 342.7305 shall not be  
18 considered in determining the extent of disability or duration of benefits under  
19 this chapter.

20 (2) The period of any income benefits payable under this section on account of any  
21 injury shall be reduced by the period of income benefits paid or payable under this  
22 chapter on account of a prior injury if income benefits in both cases are for  
23 disability of the same member or function, or different parts of the same member or  
24 function, and the income benefits payable on account of the subsequent disability in  
25 whole or in part would duplicate the income benefits payable on account of the pre-  
26 existing disability.

27 (3) Subject to the limitations contained in subsection (4) of this section, when an

1 employee, who has sustained disability compensable under this chapter, and who  
 2 has filed, or could have timely filed, a valid claim in his or her lifetime, dies from  
 3 causes other than the injury before the expiration of the compensable period  
 4 specified, portions of the income benefits specified and unpaid at the individual's  
 5 death, whether or not accrued or due at his or her death, shall be paid, under an  
 6 award made before or after the death, for the period specified in this section, to and  
 7 for the benefit of the persons within the classes at the time of death and in the  
 8 proportions and upon the conditions specified in this section and in the order  
 9 named:

10 (a) To the widow or widower, if there is no child under the age of eighteen (18) or  
 11 incapable of self-support, benefits at fifty percent (50%) of the rate specified  
 12 in the award; or

13 (b) If there are both a widow or widower and such a child or children, to the  
 14 widow or widower, forty-five percent (45%) of the benefits specified in the  
 15 award, or forty percent (40%) of those benefits if such a child or children are  
 16 not living with the widow or widower; and, in addition thereto, fifteen percent  
 17 (15%) of the benefits specified in the award to each child. Where there are  
 18 more than two (2) such children, the indemnity benefits payable on account of  
 19 two (2) children shall be divided among all the children, share and share alike;  
 20 or

21 (c) If there is no widow or widower but such a child or children, then to the child  
 22 or children, fifty percent (50%) of the benefits specified in the award to one  
 23 (1) child, and fifteen percent (15%) of those benefits to a second child, to be  
 24 shared equally. If there are more than two (2) such children, the indemnity  
 25 benefits payable on account of two (2) children shall be divided equally  
 26 among all the children; or

27 (d) If there is no survivor in the above classes, then the parent or parents wholly

1 or partly actually dependent for support upon the decedent, or to other wholly  
 2 or partly actually dependent relatives listed in paragraph (g) of subsection (1)  
 3 of KRS 342.750, or to both, in proportions that the commissioner~~executive~~  
 4 ~~director~~ provides by administrative regulation.

5 (e) To the widow or widower upon remarriage, up to two (2) years, benefits as  
 6 specified in the award and proportioned under paragraphs (a) or (b) of this  
 7 subsection, if the proportioned benefits remain unpaid, to be paid in a lump  
 8 sum.

9 (4) All income benefits payable pursuant to this chapter shall terminate as of the date  
 10 upon which the employee qualifies for normal old-age Social Security retirement  
 11 benefits under the United States Social Security Act, 42 U.S.C. secs. 301 to 1397f,  
 12 or two (2) years after the employee's injury or last exposure, whichever last occurs.  
 13 In like manner all income benefits payable pursuant to this chapter to spouses and  
 14 dependents shall terminate when such spouses and dependents qualify for benefits  
 15 under the United States Social Security Act by reason of the fact that the worker  
 16 upon whose earnings entitlement is based would have qualified for normal old-age  
 17 Social Security retirement benefits.

18 (5) All income benefits pursuant to this chapter otherwise payable for temporary total  
 19 and permanent total disability shall be offset by unemployment insurance benefits  
 20 paid for unemployment during the period of temporary total or permanent total  
 21 disability.

22 (6) All income benefits otherwise payable pursuant to this chapter shall be offset by  
 23 payments made under an exclusively employer-funded disability or sickness and  
 24 accident plan which extends income benefits for the same disability covered by this  
 25 chapter, except where the employer-funded plan contains an internal offset  
 26 provision for workers' compensation benefits which is inconsistent with this  
 27 provision.

1 (7) If an employee receiving a permanent total disability award returns to work, that  
 2 employee shall notify the employer, payment obligor, insurance carrier, or special  
 3 fund as applicable.

4 ➔Section 1842. KRS 342.732 is amended to read as follows:

5 (1) Notwithstanding any other provision of this chapter, income benefits and retraining  
 6 incentive benefits for occupational pneumoconiosis resulting from exposure to coal  
 7 dust in the severance or processing of coal shall be paid as follows:

8 (a) 1. If an employee has a radiographic classification of category 1/0, 1/1 or  
 9 1/2, coal workers' pneumoconiosis and spirometric test values of eighty  
 10 percent (80%) or more, the employee shall be awarded a one (1) time  
 11 only retraining incentive benefit which shall be an amount equal to  
 12 sixty-six and two-thirds percent (66-2/3%) of the employee's average  
 13 weekly wage as determined by KRS 342.740, but not more than seventy-  
 14 five percent (75%) of the state average weekly wage, payable  
 15 semimonthly for a period not to exceed one hundred four (104) weeks,  
 16 except as provided in subparagraph 3. of this paragraph.

17 2. Except as provided in subparagraph 3. of this paragraph, these benefits  
 18 shall be paid only while the employee is enrolled and actively and  
 19 successfully participating as a full-time student taking the equivalent of  
 20 twelve (12) or more credit hours per week in a bona fide training or  
 21 education program that if successfully completed will qualify the person  
 22 completing the course for a trade, occupation, or profession and which  
 23 program can be completed within the period benefits are payable under  
 24 this subsection. The program must be approved under administrative  
 25 regulations to be promulgated by the commissioner~~executive director~~.  
 26 These benefits shall also be paid to an employee who is a part-time  
 27 student taking not less than the equivalent of six (6) nor more than



eleven (11) credit hours per week, except that benefits shall be an amount equal to thirty-three and one-third percent (33-1/3%) of the employee's average weekly wage as determined by KRS 342.740, but not more than thirty-seven and one-half percent (37-1/2%) of the state average weekly wage, payable biweekly for a period not to exceed two hundred eight (208) weeks.

3. These benefits shall also be paid biweekly while an employee is actively and successfully pursuing a General Equivalency Diploma (GED) in accordance with administrative regulations promulgated by the commissioner~~[executive director]~~. These benefits shall be paid in the amount of sixty-six and two-thirds percent (66-2/3%) of the employee's average weekly wage not to exceed seventy-five percent (75%) of the state average weekly wage for a maximum period not to exceed seventeen (17) weeks. These income benefits shall be in addition to the maximum amount of retraining incentive benefits payable under this paragraph.

4. The employer shall also pay, directly to the institution conducting the training or education program, instruction, tuition, and material costs not to exceed five thousand dollars (\$5,000).

5. The period of weeks during which this benefit is payable shall begin no later than the thirtieth day after the administrative law judge's order awarding the benefit becomes final, except that an employee may elect to defer the beginning of such benefits up to the three hundred sixty-fifth day following the thirtieth day the order becomes final. Unless the employee has requested deferral of income benefits, those income benefits payable under subparagraphs 1. and 2. of this paragraph shall begin no later than thirty (30) days following conclusion of income

1                   benefits paid under subparagraph 3. if such benefits were paid.

2                   6.   If an employee who is awarded retraining incentive benefits under this  
3                   paragraph successfully completes a bona fide training or education  
4                   program approved by the commissioner~~[executive-director]~~, upon  
5                   completion of the training or education program, the employer shall pay  
6                   to that employee the sum of five thousand dollars (\$5,000) for successful  
7                   completion of a program that requires a course of study of not less than  
8                   twelve (12) months nor more than eighteen (18) months, or the sum of  
9                   ten thousand dollars (\$10,000) for successful completion of a program  
10                  that requires a course of study of more than eighteen (18) months. This  
11                  amount shall be in addition to retraining incentive benefits awarded  
12                  under this paragraph, and tuition expenses paid by the employer.

13                7.   An employee who is age fifty-seven (57) years or older on the date of  
14                last exposure and who is awarded retraining incentive benefits under  
15                subparagraphs 1. to 4. of this paragraph, may elect to receive in lieu of  
16                retraining incentive benefits, an amount equal to sixty-six and two-thirds  
17                percent (66-2/3%) of the employee's average weekly wage, not to exceed  
18                seventy-five percent (75%) of the state average weekly wage as  
19                determined by KRS 342.740 multiplied by the disability rating of  
20                twenty-five percent (25%) for a period not to exceed four hundred  
21                twenty-five (425) weeks, or until the employee reaches sixty-five (65)  
22                years of age, whichever occurs first, KRS 342.730(4) notwithstanding.

23                8.   A claim for retraining incentive benefits provided under this section may  
24                be filed, but benefits shall not be payable, while an employee is  
25                employed in the severance or processing of coal as defined in KRS  
26                342.0011(23).

27                9.   If an employer appeals an award of retraining incentive benefits, upon an

1 employee's motion, an administrative law judge may grant retraining  
2 incentive benefits pending appeal as interlocutory relief.

3 10. If an employee elects to defer payment of retraining incentive benefits  
4 for a period of retraining longer than three hundred sixty-five (365) days,  
5 benefits otherwise payable shall be reduced week-for-week for each  
6 week retraining benefits are further deferred.

7 (b) 1. If an employee has a radiographic classification of category 1/0, 1/1, or  
8 1/2 coal workers' pneumoconiosis and respiratory impairment evidenced  
9 by spirometric test values of fifty-five percent (55%) or more but less  
10 than eighty percent (80%) of the predicted normal values, or category  
11 2/1, 2/2, or 2/3 coal workers' pneumoconiosis and spirometric test values  
12 of eighty percent (80%) or more of the predicted normal values, there  
13 shall be an irrebuttable presumption that the employee has a disability  
14 rating of twenty-five percent (25%) resulting from exposure to coal dust,  
15 and the employee shall be awarded an income benefit which shall be an  
16 amount equal to sixty-six and two-thirds percent (66-2/3%) of the  
17 employee's average weekly wage, but not to exceed seventy-five percent  
18 (75%) of the state average weekly wage as determined by KRS 342.740  
19 multiplied by the disability rating of twenty-five percent (25%). The  
20 award shall be payable for a period not to exceed four hundred twenty-  
21 five (425) weeks.

22 2. An employee who is awarded benefits under this paragraph may, at the  
23 time of the award or before benefit payments begin, elect to receive  
24 retraining incentive benefits provided under paragraph (a)1. to 6. of this  
25 subsection, in lieu of income benefits awarded under this paragraph,  
26 provided that such option is available one (1) time only and is not  
27 revokable, and provided that in no event shall income benefits payable

under this paragraph be stacked or added to retraining incentive income benefits paid or payable under subparagraphs 1. to 6. of paragraph (a)1. to 6. of this subsection to extend the period of disability.

(c) If it is determined that an employee has a radiographic classification of category 1/0, 1/1, or 1/2, and respiratory impairment resulting from exposure to coal dust as evidenced by spirometric test values of less than fifty-five percent (55%) of the predicted normal values, or category 2/1, 2/2, or 2/3 coal workers' pneumoconiosis and respiratory impairment evidenced by spirometric test values of fifty-five percent (55%) or more but less than eighty percent (80%) of the predicted normal values, or category 3/2 or 3/3 coal workers' pneumoconiosis and spirometric test values of eighty percent (80%) or more, there shall be an irrebuttable presumption that the employee has a disability rating of fifty percent (50%) resulting from exposure to coal dust, and the employee shall be awarded an income benefit which shall be an amount equal to sixty-six and two-thirds percent (66-2/3%) of the employee's average weekly wage but not to exceed seventy-five percent (75%) of the state average weekly wage as determined by KRS 342.740 multiplied by the disability rating of fifty percent (50%). The award shall be payable for a period not to exceed four hundred twenty-five (425) weeks.

(d) If it is determined that an employee has a radiographic classification of category 2/1, 2/2, or 2/3 coal workers' pneumoconiosis, based on the latest ILO International Classification of Radiographics, and respiratory impairment as evidenced by spirometric test values of less than fifty-five percent (55%) of the predicted normal values or category 3/2 or 3/3 pneumoconiosis and respiratory impairment evidenced by spirometric test values of fifty-five percent (55%) or more but less than eighty percent (80%) of the predicted normal values, there shall be an irrebuttable presumption that the employee